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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 12-12020-mg

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In the Matter of:

RESIDENTIAL CAPITAL, LLC, et al.,

Debtors.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

January 26, 2016

10:37 AM

B E F O R E:

HON. MARTIN GLENN

U.S. BANKRUPTCY JUDGE

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(CC: Doc# 9494 and Doc# 9124, 8315) Trial Regarding Claim

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Number 725 Filed by William J. Futrell

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Transcribed by: Hana Copperman

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A P P E A R A N C E S :

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RESIDENTIAL CAPITAL, LLC, ET AL.

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1 P R O C E E D I N G S

2 THE COURT: Please be seated.

3 All right. We're here in Residential Capital, number
4 12-12020. We're here in connection with the trial of the
5 contested matter, the ResCap Borrower Claims Trust's objection
6 to proof of claim number 725 filed by William J. Futrell.

7 My I get the appearances, please?

8 MR. WISHNEW: Good morning, Your Honor. Jordan
9 Wishnew and James Newton of Morrison & Foerster for the ResCap
10 Borrower Claims Trust.

11 MR. MARGOLIS: Thomas Margolis for William J. Futrell,
12 the claimant.

13 THE COURT: Have I been mispronouncing your name?

14 MR. MARGOLIS: It's okay.

15 MR. WISHNEW: I pronounce it Futrell, and they
16 pronounce it Futrell, so it works.

17 THE COURT: Okay. All right. I apologize if I --

18 MR. FUTRELL: Okay. Not a problem.

19 THE COURT: All right. Just give me a second.

20 All right. So before we begin, I'm concerned about
21 the time, because -- and I understand that you were staying in
22 New Jersey and took the bus in and had difficulties.

23 This is scheduled as a timed trial. I don't know
24 whether we're going to be able to get this done. We're just
25 going to have to see where we get to.

1 We have to break for lunch at about 12:30, because I
2 have to be at a meeting at the City Bar at 1 o'clock. They put
3 me first on the agenda for this meeting, and I will come back,
4 but I think it's likely to be a quarter after 2 when we resume.

5 And then, to make it clear to all of you, I teach on
6 Tuesday afternoon at Columbia Law School. My class begins at
7 4:20. And so I need to get up there. We'll see exactly what
8 time we break for that.

9 We'll see how far we get. There are two alternatives.
10 Counsel can talk about it in the break.

11 I know, Mr. Wishnew, one was Ms. Lathrop planning to
12 go home to Iowa.

13 MR. WISHNEW: Thank you, Your Honor. Jordan Wishnew,
14 Morrison & Foerster, for the ResCap Borrower Claims Trust.

15 Ms. Lathrop is scheduled to be on a 10:30 a.m. flight
16 tomorrow --

17 THE COURT: Okay.

18 MR. WISHNEW: -- out of LaGuardia, so --

19 THE COURT: All right. And --

20 MR. WISHNEW: She would have to testify today.

21 THE COURT: Okay. And, Mr. Margolis, when are you
22 scheduled to return home?

23 MR. MARGOLIS: At this point we plan to come and leave
24 directly.

25 MS. FUTRELL: Yeah. I have to be to work tomorrow

1 morning at 8.

2 THE COURT: How long -- you drove here from Indiana?

3 MS. FUTRELL: Yes.

4 THE COURT: How long was the drive?

5 MS. FUTRELL: About twelve hours.

6 THE COURT: Well, let's see where we get to.

7 MR. WISHNEW: Your Honor, in an effort to try and
8 expedite some matters, we have stipulated to certain exhibits.

9 I can --

10 THE COURT: Well, let me raise this issue about the
11 exhibits. I certainly want to -- I don't want to prejudice any
12 parties' rights, but I've spent a lot of time preparing. And
13 I'd like to dispense with opening statements.

14 With respect to the exhibits, I know I entered an
15 order raising a question, Mr. Margolis, about many of your
16 exhibits. The more I prepared after that, I think more of the
17 exhibits may meet even my stringent test for admission. Unless
18 the parties disagree, I would just suggest both of you agree
19 all your exhibits come in. I'll give them such weight as
20 they're, you know, obviously, they're entitled to. But I'm not
21 going to preclude --

22 Mr. Wishnew, I want to be clear. I'm not preventing
23 you from -- if you've got objections, to do that, but you've
24 all seen each other's exhibits. I don't know.

25 MR. WISHNEW: Your Honor, with regards to your

1 proposal, I think we're generally fine with that. I would say
2 this, that we -- I would say have concerns about a significant
3 number of the claimant's exhibits on the grounds of relevance,
4 but to the extent Your Honor decides to give them whatever
5 weight you want to, then I think we get to the same point.

6 THE COURT: Look, I'll give them such weight as I
7 think they're entitled to.

8 MR. WISHNEW: Right.

9 THE COURT: And certainly no more than that.

10 What's your view, Mr. Margolis?

11 MR. MARGOLIS: I would concur.

12 THE COURT: All right. Let's see which exhibits get
13 used.

14 So, Mr. Wishnew, you've provided the direct written
15 testimony of Ms. Lathrop in the form of a declaration.

16 Mr. Margolis, you provided witness statements of your
17 two clients, but they're not under oath. Neither of them --
18 ordinarily, it needs to be a declaration under oath. 28 U.S.C.
19 Section 1746 is the -- it seems to me that that can be cured by
20 having your clients, when they take the witness stand, affirm
21 under oath that whatever they've said in their witness
22 statement is true and correct.

23 Ordinarily, Mr. Margolis -- Mr. Wishnew knows this
24 because we've had other trials in ResCap. Where it's written
25 narrative direct you put your witness on, and you're going to

1 start off, because you're the claimant. They take the oath.
2 And then you would need to indicate that they affirm what
3 they've said in their written statements, and then we start
4 with the cross-examination.

5 MR. MARGOLIS: Okay.

6 THE COURT: I don't know what you envisioned about it,
7 but that's how we -- you do get a chance to do a redirect.

8 MR. MARGOLIS: Okay. Sure.

9 THE COURT: Mr. Wishnew, what's your view on this?

10 MR. WISHNEW: I'm fine with that procedure, Your
11 Honor.

12 THE COURT: Okay. And I take it you intend, at the
13 appropriate time, to offer Ms. Lathrop's declaration, submit
14 her for cross-examination at that point.

15 MR. WISHNEW: Yes, Your Honor.

16 THE COURT: Okay. All right. So let's dispense with
17 the opening statements. I really have spent a lot of time
18 reviewing this matter.

19 Let me make some other preliminary comments, perhaps
20 to focus the questioning and the evidence.

21 So the pre-trial order that you both signed and that I
22 entered makes clear that the three issues for trial all relate
23 to the October 30, 2009 letter from Mr. Margolis. Counsel for
24 the Trust has agreed that it satisfies the requirements of a
25 qualified written request under RESPA, and that's the focus of

1 the evidence.

2 There is a dispute as to whether the Trust responded,
3 timely responded, to the QWR. The Trust's position has been
4 that -- and cites case authority in support -- that there
5 certainly were written responses after that October 30th
6 letter. I think the November 13th one refers to an October 23
7 letter. And the Trust's position is that that -- I think it's
8 November 13 was the date -- provides a written response to the
9 questions raised by the October 30, 2009 qualified written
10 request.

11 The question in my mind, Mr. Wishnew, is whether the
12 November 13th letter accurately factually responds to the
13 October 30, 2009 QWR. And, to be more specific, the records
14 which I've seen indicate that Ms. Futrell, in particular, had
15 raised, on numerous occasions, questions about the accuracy of
16 the amount of any escrow shortage, and the Trust acknowledges
17 what it believes was an inadvertent typographical error,
18 essentially adding 1,000 dollars to the amount required for the
19 escrow.

20 That's not disputed. I mean, it's not disputed that
21 there was a mistake.

22 MR. WISHNEW: Um-hum.

23 THE COURT: Okay? What I'm going to want to hear -- I
24 mean, it looks to me that the November 13th letter perpetuates
25 the mistake. What I mean, perpetuates --

26 I think you understand what I mean, Mr. Wishnew. When

1 I say it perpetuates the mistake, it, once again, included the
2 incorrect amount for the escrow.

3 And so assuming that I consider that the November 13th
4 letter should be considered as a response to the October 30,
5 2009 QWR, it appears -- I'm not making a finding with it -- it
6 appears to be inaccurate on what Ms. Futrell had been
7 questioning since June.

8 And so that raises the question, was GMAC liable for a
9 violation of Section 6(e) of RESPA for failing accurately to
10 respond to the question that was raised in the October 30, 2009
11 QWR. And if that was a violation -- I'm not saying it was --
12 I'm saying but if it was a violation then the issue shifts, I
13 think, to what are actual damages, because the statute permits
14 a borrower who -- or where the borrower or the borrower's
15 representative sends what is a QWR, which we've acknowledged
16 the October 30th letter to be, the borrower is entitled to
17 recover actual damages.

18 And my biggest questions are really about that. What
19 are the actual damages that can be recovered?

20 And I won't say more now, but I just want to set the
21 framework, particularly since we're short on time. That's what
22 I -- and you'll make -- I'm not going to hamstring you in your
23 presentations of the evidence, but I wanted you all to know, as
24 we start out, what I've been thinking about. Okay?

25 So, Mr. Margolis, call your first witness.

1 MR. MARGOLIS: I'd call Alicia Futrell.

2 THE COURT: Okay. Come on. Come on up. You'll come
3 up and you'll be sworn. And there's water up there in a cup if
4 you need water. Okay?

5 MS. FUTRELL: Okay.

6 THE COURT: Just go ahead up there, and you'll raise
7 your right hand, and you'll be asked to swear or affirm that
8 your testimony is truthful.

9 (Witness sworn)

10 THE COURT: All right. Please have a seat. Okay? If
11 you want to take some water you can fill a cup with it or --
12 leave that up to you.

13 And the system, we don't have a court reporter that
14 takes stenography, but it's a voice recording system. So we
15 have to make sure that you speak loud enough and into the
16 microphone so that we get an accurate record. Okay?

17 THE WITNESS: Okay.

18 THE COURT: Thank you very much.

19 Go ahead, Mr. Margolis.

20 MR. MARGOLIS: Thank you.

21 DIRECT EXAMINATION

22 BY MR. MARGOLIS:

23 Q. Please state your name for the record.

24 A. Alicia Futrell.

25 Q. And you are the wife of William J. Futrell?

1 A. Yes.

2 Q. And at this point there was a mortgage you had.

3 THE COURT: Mr. Margolis, I guess the -- ordinarily,
4 because I have the written statement --

5 MR. MARGOLIS: Right. Okay.

6 THE COURT: -- is you need to get her to affirm --

7 MR. MARGOLIS: Okay.

8 THE COURT: -- that it's truthful.

9 MR. MARGOLIS: Okay.

10 THE COURT: Are you just going to cover what's in the
11 statement?

12 MR. MARGOLIS: Yes.

13 THE COURT: Okay. So ordinarily what happens with
14 these trials is we have written direct testimony.

15 MR. MARGOLIS: Okay.

16 THE COURT: And then the witness -- Mr. Wishnew or Mr.
17 Newtown can cross-examine. And then if you have a redirect
18 examination you can do that.

19 MR. MARGOLIS: Okay.

20 THE COURT: If you have a problem with that approach,
21 tell me now.

22 MR. MARGOLIS: I will defer to the Court.

23 THE COURT: Well, let's start by getting you to -- let
24 me ask you this. Do you have your written witness statement in
25 front of you?

1 THE WITNESS: I don't.

2 THE COURT: Could you give her her witness statement?

3 MR. MARGOLIS: Yes. I'm going to that right now.

4 (Pause)

5 THE COURT: Okay. I have it in front of me.

6 Go ahead, Mr. Margolis.

7 MR. MARGOLIS: Okay.

8 BY MR. MARGOLIS:

9 Q. We've prepared a summary of your direct testimony.
10 Correct?

11 A. Correct.

12 Q. Okay. And I'm just going to hit the salient points. Okay?

13 THE COURT: Before you -- let me.

14 Do you have it in front of you?

15 THE WITNESS: Yes, I do.

16 THE COURT: Have you reviewed it previously?

17 THE WITNESS: I have.

18 THE COURT: Is everything contained in your witness
19 statement true according to the best of your knowledge?

20 THE WITNESS: Yes.

21 THE COURT: Okay. If you want to cover some limited
22 additional questions, you're going to get a chance on redirect
23 but --

24 MR. MARGOLIS: Okay.

25 THE COURT: Go ahead.

1 Q. Okay. There was a point where Homecomings Financial had
2 it, and then it was transferred to GMAC.

3 A. Correct.

4 Q. Okay. And we came to the June 17, 2009 analysis.

5 A. Correct.

6 Q. Okay. And the two problems there were the insurance, where
7 the 352.53 , where the 1 was added.

8 A. Yes.

9 Q. Okay. Was that ever corrected?

10 A. That was corrected, but the shortage was not.

11 Q. Okay. The shortage being 1,247 and change.

12 A. Yes.

13 Q. Okay.

14 THE COURT: Twelve hundred and forty-seven dollars?

15 MR. MARGOLIS: Yes.

16 THE WITNESS: And, like, seventy-one cents, I believe.

17 THE COURT: Okay.

18 MR. WISHNEW: 49.71.

19 Q. Okay. Now, that's what the June 17th document said, but
20 the servicing notes indicated that the amount was in the sum
21 of --

22 A. Fifteen hundred --

23 Q. -- \$1,541.69.

24 A. Yes.

25 Q. Okay. So there was a shortage immediately.

1 A. Yes. It showed up on our July 1st statement.

2 Q. Okay. Was that ever corrected by GMAC, any agent and/or
3 employee?

4 A. No.

5 Q. What was the net effect of that for you?

6 A. It caused us extreme -- I mean, it's -- basically severed
7 our credit. We couldn't get any credit from anyone, because it
8 was showing up that we were missing payments at 886.36, when
9 our payment was 657.25.

10 Q. Okay. What efforts did you make to get this matter
11 resolved?

12 A. They would call on a daily basis, and every time they would
13 call I would explain the exact same thing over and over again,
14 because they would transfer me from one department to another.

15 They would say oh, you need Loss Mitigation. No, you need
16 Escrow. No, you need Modification. It was never-ending. And
17 no one person in the departments would ever say the same thing.

18 Q. Please identify who they were?

19 A. There were so many -- a few that stick out were Romeo. He
20 was the first one that I spoke to, and actually convinced us to
21 stay with the modification. I called and tried to make a July
22 payment, but they told me I couldn't make the payment until
23 August. So they essentially made us skip another payment.

24 Q. Why did they say that?

25 A. Because we had to be ninety days delinquent in order to

1 qualify for a HAMP modification.

2 Q. At that point in time, were you in arrears?

3 A. We were one month. We tried to stay thirty days behind
4 always, so as to avoid foreclosure.

5 Q. And could you -- and what was the time frame for this?

6 A. That I started telling them?

7 Q. No, no, no. When they said you are one month, and they
8 wanted, basically, to tell you stop making payments. Correct?

9 A. Correct. Like, two months. We missed June and July.

10 Q. Okay. And so what --

11 THE COURT: June and July of 2009?

12 THE WITNESS: 9. Correct. Because the modification
13 trial didn't start until August.

14 Q. So what was the direct and proximate result of that
15 happening?

16 A. They reported that we weren't paying our mortgage to the
17 credit bureaus.

18 Q. And was that a problem?

19 A. Yes.

20 Q. Why?

21 A. Well, it's still continuing today. It's still showing up
22 on our credit.

23 Q. Okay. There was -- and I refer to Exhibit number 20.

24 MR. MARGOLIS: May I approach, Your Honor?

25 THE COURT: Yes.

RESIDENTIAL CAPITAL, LLC, ET AL.

17

1 A. Okay. I have the USDA letter.

2 Q. Yes. Okay.

3 MR. MARGOLIS: For the record, that was dated August
4 10, 2011.

5 A. Correct.

6 Q. Okay. And on the second page --

7 THE COURT: Mr. Wishnew, do you have any objections to
8 Exhibit 20 coming into evidence?

9 MR. WISHNEW: One moment, Your Honor.

10 THE COURT: Is it the USDA letter, Your Honor?

11 MR. WISHNEW: Yes.

12 THE WITNESS: Um-hum.

13 MR. WISHNEW: Your Honor, if I can reserve until after
14 Ms. Futrell is done testifying? I have concerns about
15 relevance.

16 THE COURT: Fine. Go ahead, Mr. Margolis.

17 MR. MARGOLIS: Okay.

18 Q. Now, on page 2, does that indicate anything about missed
19 payments and/or referrals?

20 A. Yes. It has the eleven missed mortgaged payments, which
21 some of those were ones that we were trying to make, and the
22 other ones were from when they wanted us to sign a legally
23 binding document that was incorrect and wouldn't -- they
24 kept --

25 THE COURT: Who wanted you to sign?

1 THE WITNESS: GMAC and their representatives. They
2 said we had a special payment plan. There was no special
3 payment plan. When I called back, I wanted our original
4 mortgage. Romeo had said we could opt out at the end of the
5 trial if we wanted to. We tried to opt out. We tried all the
6 way up until January something. We kept waiting for them to
7 stop the modification, and they never did.

8 And so throughout all that time they were wanting a
9 payment of 886.36, when our original mortgage payment was
10 657.25. We couldn't come up with the additional money to make
11 the 657.25. That's why we wanted the modification. So to add
12 that 229.11 onto our payment back in July, and they -- that's
13 what shows up on our credit report. They wouldn't let us out
14 of the modification. We didn't want it.

15 Q. Okay. And what was -- did the premises deteriorate,
16 worsen --

17 A. Yes. Because we couldn't get the credit to fix it.

18 Q. Okay. Now, before I get to the USDA letter, does that make
19 reference to the condition of the premises --

20 A. It does.

21 Q. -- in August of '11?

22 A. It does.

23 Q. Okay. And could you summarize what that would be --

24 A. Because of the condition of the house they were only
25 willing to loan 10,000 on the actual house, because the other

1 20 needed to be used to bring the house up to the USDA Code.

2 Q. Does the USDA letter point out the problems, notably with
3 the condition of the real estate, that it was reported to the
4 credit bureau --

5 A. Yes.

6 Q. -- and, just generally, the situation you were in at the
7 time?

8 A. Yes. I actually had to appeal that, and won, because of
9 our credit --

10 THE COURT: Appeal what?

11 A. -- with that.

12 THE WITNESS: The USDA decision. They denied it at
13 first. And I appealed it, and Anthony Kirkland, the director
14 in Indianapolis, approved -- approved it. And I actually
15 called GMAC --

16 THE COURT: Approved what?

17 THE WITNESS: The loan. He was going to lend us money
18 on the house.

19 THE COURT: Okay.

20 THE WITNESS: And he said I could try to call GMAC and
21 see if they would basically do a short sale back to us. I
22 called, and I spoke to -- I believe his name was Jones -- no,
23 not Jonesy -- Jeremiah. And he said that they could do that.

24 And I called Anthony Kirkland back. I got all the
25 information.

1 And when I called back, they told me that he had been
2 fired, and there was absolutely no way they would ever sell it
3 to anybody but a third party.

4 THE COURT: Go ahead, Mr. Margolis.

5 Q. Where you underwater with this mortgage?

6 A. Yes.

7 Q. Okay. And did they appraise the real estate at 30,000
8 dollars?

9 A. Yes.

10 Q. And the mortgage was --

11 THE COURT: Who's the they? Who's the they?

12 THE WITNESS: The people that -- the USDA got an
13 appraiser, and they came out, and they did the appraisal for
14 the USDA loan.

15 THE COURT: Of 30,000 dollars.

16 THE WITNESS: Of 30,000. Yes.

17 Q. And the mortgage that you got was for 76?

18 A. Correct.

19 THE COURT: The mortgage, the original mortgage --

20 THE WITNESS: The original mortgage.

21 THE COURT: -- for 76,000.

22 THE WITNESS: Yes.

23 MR. MARGOLIS: Your Honor, for the record, I move for
24 the admission of number 20.

25 MR. WISHNEW: Your Honor, I renew my objection on the

1 grounds of relevance.

2 THE COURT: Overruled. Exhibit 20 is in evidence.

3 I urge counsel to both agree that we consider all of
4 the exhibits, but we'll do it one by one if we have to. Okay?
5 So the objection to Exhibit 20 is overruled. It's in evidence.
6 (USDA letter to the Futrells dated 8/10/2011 was hereby
7 received into evidence as Futrells' Exhibit 20, as of this
8 date.)

9 Q. Okay. Now, talking about the real estate, to your
10 knowledge, did it lose value?

11 A. Yes.

12 Q. And I'd like to refer you to Exhibit 18 of this. Please
13 look at that document.

14 A. Yeah.

15 Q. Okay. What is it?

16 A. It's our property assessment from our trustee.

17 Q. Well, who was your --

18 A. The Jackson Township trustee at Jay County courthouse.

19 Q. Okay. A governmental entity --

20 A. Yes.

21 Q. And is this something that they did on a regular and
22 routine basis?

23 A. Yes.

24 Q. That's part of their job and function in local government.

25 A. Yes.

1 Q. What was the value in 2016, the appraised value from them,
2 and when they started in, I believe, 2009?

3 A. I have to check. I think the 42. The 42,600.

4 Q. Okay. And that --

5 THE COURT: I'm sorry. I don't understand what you're
6 according to. What year?

7 Q. Okay. It looks like for the year of 2011, what was the
8 appraised improvements?

9 A. Forty-nine thousand, three hundred.

10 Q. Okay. And for 2012?

11 A. Forty-three, four.

12 Q. And for 2013?

13 A. Forty-six. Forty thousand, six hundred.

14 Q. And for 2014?

15 A. Forty-two thousand, seven hundred.

16 Q. And for 2016?

17 A. Forty-two thousand, six hundred.

18 Q. The --

19 THE COURT: Is that 2015 or 2016?

20 MR. MARGOLIS: 2015. I'm sorry.

21 Q. Okay. The --

22 THE COURT: Oh, I see. It's the same for 2016. I'm
23 sorry.

24 Q. The value of the property for property taxes was decreased?

25 A. Correct.

1 Q. Now, did you take photographs?

2 A. We did.

3 Q. Okay. When were those taken?

4 A. I believe they were taken in August or September of this
5 year.

6 Q. Okay.

7 A. Or of last year, actually.

8 Q. Okay. Now --

9 THE COURT: August/September of 2015?

10 THE WITNESS: 2015. Yes, sir.

11 Q. Okay. Now, I have opened this. There are several
12 photographs.

13 Okay. I have opened 1-A and 1-B.

14 A. Correct.

15 Q. Could you please state for the record what these picture
16 indicate?

17 A. Those are the hole in my ceiling in our kitchen, where the
18 roof fell in from the roof leaking.

19 Q. Okay. Is there a before and after here?

20 A. There is.

21 Q. And just to --

22 A. The top one is before, where it's just a crack, and the
23 bottom one is where the plaster fell in.

24 Q. And the second page, picture C, what does that show?

25 A. That is my son's bedroom on the outside wall where mold is

1 growing. The black on the bottom is mold.

2 Q. What about D?

3 A. D is my son's room also, and that's his ceiling right by
4 his heater vent where the ceiling is starting to come in from
5 the roof leaking.

6 Q. And what about E?

7 A. That's the kitchen again, where it fell in.

8 Q. And what about F?

9 A. That's also the kitchen where it fell in.

10 Q. What else did G show?

11 A. G shows the roof, and you really can't see it in this
12 picture, but it has a big dip where it's starting to bow.

13 Q. And H?

14 A. H shows the biggest concern that the USDA had. You can see
15 the front part of the house that doesn't have any siding on it.
16 That part was built -- when they built the foundation, they
17 didn't dig a -- is it a header?

18 UNIDENTIFIED SPEAKER: Footer.

19 A. A footer. Sorry. They didn't dig a footer. And so you
20 can see on the next page where the foundation is literally
21 floating on the ground. And so the two sections of house are
22 starting to separate, and that's why the USDA would only loan
23 10,000, because the front part of the house has to be
24 completely torn down.

25 Q. What was the impact of your contact with GMAC relative to

1 the condition of the house?

2 A. They didn't care.

3 Q. But what impact did it have on the condition of the real
4 estate?

5 A. It deteriorated. It continued to go down.

6 Q. Were you able to do any remedial actions?

7 A. No. That was what our -- USDA was our only hope on that
8 one.

9 Q. Were you able to use credit for alternate means?

10 A. No.

11 Q. Okay. Now, I approached you with I and J. Okay?

12 Now, what does I depict?

13 A. I is where the house is starting to separate. You can see
14 the two sections of house.

15 Q. Okay. And J?

16 A. J is the foundation where the cracks and you -- you can
17 barely see it, but there's the dark spot. That's actually
18 where the concrete -- the ground has moved down away from the
19 concrete, and you can see the grass where they poured the
20 concrete originally.

21 Q. Okay. And K? What does that depict?

22 A. K is where the foundation is cracking and moving --
23 starting to move away.

24 Q. L?

25 A. L is another big -- my husband can fit his foot under --

1 that's the foundation. That's the corner of the house. And my
2 husband can fit his foot underneath there.

3 Q. And M?

4 A. That's another crack where it's start --

5 Q. Okay.

6 A. It's just different cracks, where it's all a moving part.

7 Q. Okay. Do you have an opinion with regard to the value of
8 the house?

9 A. Now?

10 Q. Yes.

11 A. The value of the land and maybe the well that's on it. The
12 structure of the house is not worth anything.

13 Q. Okay. In 2009 did, or do you have an opinion what the
14 value of the house was?

15 A. In '09? That's when this first started. It -- probably
16 about 60,000.

17 Q. Okay.

18 A. We had had an appraisal. We had actually tried to
19 refinance through GMAC, and they had done an appraisal and
20 appraised it at sixty-five.

21 Q. Okay.

22 A. And that was in 2007.

23 Q. Does the house require remedial work?

24 A. Yes.

25 Q. And was there an estimate gotten for that purpose?

1 A. There was.

2 Q. And, for the record, that's number 19. Let me show you
3 that. Is that the estimate?

4 A. Yes, it is. It's Leander.

5 Q. Okay. Who gave you this estimate?

6 A. Leander Schwartz. He's actually one of the Amish crew that
7 worked on the house when they did -- when we had the community
8 home -- Minor Home Repair. He came in and he did work with his
9 crew in 2005.

10 Q. And he does this for a living?

11 A. Correct.

12 Q. Okay. And was this estimate to bring it up to Code?

13 A. Yes. And that's all it was is to bring it up to Code.

14 Q. Okay. And that was for 47,000 dollars?

15 A. Yes.

16 Q. Now, when you were addressing this, what was the connection
17 to that and the actions of GMAC?

18 THE COURT: I don't understand your question.

19 A. I don't know.

20 Q. Okay. Well, was there a correlation between the house and
21 the actions of GMAC?

22 A. Yes. They --

23 Q. Okay.

24 A. They ruined my husband's credit. There was no way to fix
25 it. And the one chance we had of the USDA, they destroyed

1 that, and then shortly after the USDA -- they denied the USDA
2 short sale -- they offered to sell it to us for 27,000.

3 Q. Okay. What --

4 A. So I feel they knew the house was not worth anything.

5 Q. Was there any explanation above and beyond their
6 correspondence?

7 A. I'm sorry?

8 Q. Did anyone call you, or did you call them and did they say
9 we're going to do this because of such and such reason?

10 A. You mean GMAC or just in general, like debtors in general?

11 Q. Well, with GMAC. With --

12 A. They threatened to foreclose all the time. And eventually
13 it got to the point where I told them do it. Do it, please. I
14 would love to have a federal judge hear this.

15 Q. What --

16 A. Please foreclose.

17 Q. When did they start threatening foreclosure?

18 A. Oh, gosh. They had all -- they always threatened
19 foreclosure. That's why we stayed -- we went only one month
20 behind up until my husband had his heart attack, and then after
21 that it -- I got tired of fighting them. It wasn't worth the
22 hassle. And that's when I started telling them, foreclose. Do
23 it.

24 Q. How frequently would -- would they say it frequently?

25 A. Yes. Every time they would call.

1 Q. The same person, different person?

2 A. Different person.

3 Q. And did that have the -- one moment.

4 How did that affect your resources?

5 A. Tremendously.

6 Q. How?

7 A. Because when we were trying to keep from losing a house,
8 because we bought the house from my father, so I have a
9 sentimental attachment to the property, which is the only
10 reason I fought this long to keep it.

11 It had a tremendous impact on every aspect of life. Every
12 one. Because we were trying to pour everything that we had
13 into keeping the house, but it wasn't ever enough. And the
14 late fees were starting to build, so that's why we asked for
15 the modification. But that didn't work up. That made it --
16 that made it worse.

17 Q. Let's talk about that for the moment. Who brought up the
18 modification?

19 A. We did.

20 Q. Okay. Was there anything said about opting out?

21 A. When I -- when we received the first July statement, July,
22 2009, which was right around the same time that we received the
23 June 17, 2009 escrow analysis, the July payment said that they
24 wanted 886.36, so immediately upon receiving that statement in
25 the mail --

1 Q. July of what year?

2 A. Of 2009. I called to find out why there was \$229.11 added
3 onto our mortgage payment. And they said that it was for
4 escrow and an escrow shortage.

5 And so from that point on they wanted 886.36. It was like
6 the 657.25 payment was gone. It was -- they wouldn't accept
7 657.25 --

8 Q. What steps --

9 A. -- from July on.

10 Q. What steps did you take to try and address this with GMAC?

11 A. Daily calls to try -- to several different departments to
12 try to get it fixed. And Romeo said that if we did the
13 modification, we did the trial, become current, all the late
14 fees would disappear, and we could opt out of the escrow.

15 THE COURT: Let me just ask you a couple of questions.

16 THE WITNESS: Yeah.

17 THE COURT: When your payments were the 657.25, the
18 original mortgage, there was no escrow for taxes and insurance.

19 THE WITNESS: Correct. There never had been.

20 THE COURT: And it was when you were being considered
21 for a modification that GMACM told you that you'd also have to
22 have an escrow for taxes and insurance. Am I correct?

23 THE WITNESS: Yes.

24 THE COURT: Okay. So you don't dispute, if I'm
25 reading the papers correctly, you're not disputing that it was

1 appropriate for GMAC to require an escrow for the amount that
2 would reflect one-twelfth of the amount of the taxes and
3 insurance.

4 THE WITNESS: Correct.

5 THE COURT: Okay. Go ahead, Mr. Margolis.

6 MR. MARGOLIS: Okay.

7 Q. Okay. So did there reach a point when you wanted to opt
8 out?

9 A. Yes.

10 THE COURT: Opt out of what?

11 Q. When was that rel --

12 THE COURT: Mr. Margolis, I don't understand your
13 question.

14 MR. MARGOLIS: Okay.

15 THE COURT: Opt out of what?

16 MR. MARGOLIS: The loan modification.

17 THE COURT: Go ahead.

18 A. Yes.

19 Q. Okay. When did that occur, approximately?

20 A. We tried to opt out before the modification even began.

21 Q. Put a time frame on it, please.

22 A. Let's say between June 24th and 27th, because that's when
23 we would have received our monthly statement for July. When
24 I --

25 THE COURT: You're talking about 2009?

1 THE WITNESS: 2009.

2 A. When I saw the 886.36, and saw that they had already
3 changed -- they changed it, even though their paperwork in
4 their contract said it wouldn't change until after the
5 modification was signed and completed. Our statement in July
6 showed 886.36, and when we received that in the mail I called
7 and wanted to opt out then.

8 Romeo talked me into going ahead and doing the trial mod
9 through October and opting out of it then. So we paid our last
10 payment -- we paid our October payment early, so that we could
11 start working on opting out. And that was at the -- that was
12 in October. They didn't finally get rid of that modification
13 until January. So all of that time that we were trying to opt
14 out and pay our original payment of 657.25, they wanted 886 or
15 \$836.86 or 886.36.

16 THE COURT: I think it was 886.36.

17 THE WITNESS: Eight eighty-six. I'm sorry. I'm
18 starting to get flustered.

19 A. They wanted the 886.36 from July on.

20 Q. What was the situation with regard to any escrow shortage?

21 A. They ignored me.

22 Q. But did it exist?

23 THE COURT: May I ask you this? Were you paying the
24 taxes and insurance yourself?

25 THE WITNESS: Yes. We actually walked in to pay our

1 spring tax -- we actually walked in to pay our taxes in August
2 of 2009, before the modification was ever supposed to have been
3 finalized.

4 THE COURT: Right. Yes.

5 THE WITNESS: They'd already paid them. And at that
6 point our escrow shortage would have been eighty-two dollars.
7 Not what they said it was. And there was no way we would have
8 had an escrow shortage payment of over 104 dollars.

9 THE COURT: Right.

10 THE WITNESS: Because we never had an escrow. The
11 escrow balance was zero.

12 Q. That triggers a conversation about insurance. Was there
13 force-placed insurance put on you?

14 A. Yes.

15 Q. With regard to Balboa.

16 A. Correct.

17 Q. And did GMAC attach some cost to that?

18 A. Yes.

19 MR. MARGOLIS: May I approach, Your Honor?

20 THE COURT: Go ahead.

21 Q. In reference to Exhibit number 9, please state what --
22 there are two exhibits. State what they are for the record.

23 A. This is our Mutual Fire Insurance declaration page.

24 Q. Okay. And at this point there are two of them. And is
25 there any marking on --

1 A. Yes. Arlene Stump (ph.). She's -- that's --

2 THE COURT: I'm sorry. I can't hear you.

3 THE WITNESS: I'm sorry.

4 A. Arlene Stump would be his secretary. And she remembers --
5 she still remembers to this day having to call and fax in our
6 information to try to get that force-placed insurance off of
7 our account.

8 Q. Okay. Does it indicate a year?

9 A. 2 -- 2/11 of '09?

10 Q. No, no.

11 A. Up here?

12 Q. On the fax part.

13 A. October 30, '09.

14 Q. And then on the other one, is it basically the same
15 document?

16 A. Yeah, but this was our bill.

17 Q. Okay. And does this indicate a fax marking?

18 A. 10/20 of '14.

19 Q. And does that go to anyone in particular?

20 A. Morrison & Foerster.

21 Q. Was there any actual termination by GMAC of the forced-
22 place insurance, to your knowledge?

23 A. No. Whenever we would call Balboa was the only insurance
24 company that would get brought up, which concerned me, because
25 we've never had Balboa as our insurance. It's always been --

1 I'm sorry? State Farm.

2 UNIDENTIFIED SPEAKER: Well, when this was --

3 A. Jim Wright.

4 UNIDENTIFIED SPEAKER: -- State Farm.

5 THE COURT: No, no, no, no. You can't --

6 A. It was Jim Wright, which is who my father had as an
7 insurance agent, and then we switched over to Mel Burkhardt, but
8 we were with Mel Burkhardt before Homecomings went to GMAC.

9 THE COURT: Let me just make sure I understand what --
10 Exhibit 9, the Mutual Fire Insurance Co., is the insurance that
11 you believe you had in place at this time period of June, 2009.

12 THE WITNESS: Yes. It's the one we did have in place.

13 THE COURT: All right. Okay.

14 THE WITNESS: And we had had that same policy --

15 THE COURT: All right. I understand.

16 THE WITNESS: -- for years.

17 THE COURT: Go ahead.

18 Q. Okay. Was that conveyed to the agent and employees of
19 GMAC?

20 A. Several times.

21 Q. Do you recall any names?

22 A. Oh, gosh. Shipalla (ph.) And I think one was named Mary.

23 Q. Do you recall time frames? From when to when?

24 A. From October, the beginning of Oct -- well, I started
25 questioning the forced-place insurance from the very beginning,

1 from June of '09. But it was when I had contacted a --

2 THE COURT: May I ask you? When did you understand
3 that GMACM put the forced-place insurance on the property,
4 covered the property with the forced-place insurance?

5 THE WITNESS: I didn't discover that until -- I didn't
6 discover exactly what that was. I knew the charge was there,
7 but I didn't understand why.

8 THE COURT: Okay.

9 THE WITNESS: I had called one of the HOPE NOW, and
10 they put me in contact with a gentleman named Mike Davis, who
11 had been an underwriter, and he said -- which is how Arlene
12 Stump got involved -- he said that what he thought happened was
13 when it transferred from Homecomings to GMAC the homeowners
14 insurance information didn't get transferred with it.

15 And he said a quick remedy would be to have our
16 insurance agent send in the declaration page, which is -- we
17 thought that would fix it. And it didn't. And that's when
18 Balboa's name started popping it.

19 THE COURT: Go ahead, Mr. Margolis.

20 Q. Okay. Now, when you were talking to them, did the various
21 employees of GMAC make representations to you?

22 A. Yes. Some of them did. I actually spoke to people in
23 Balboa's insurance department.

24 Q. Okay. Like what were you told by GMAC?

25 THE COURT: Well, Balboa is not the same as GMAC, Mr.

1 Margolis.

2 MR. MARGOLIS: GMAC. I'm sorry.

3 Q. What did GMAC tell?

4 A. They would transfer me to a different department. They
5 would say it was loss mitigation. Because nobody could figure
6 it out.

7 Q. What -- okay.

8 A. Their own people were confused.

9 MR. WISHNEW: Your Honor, objection to this line of
10 questioning.

11 THE COURT: Overruled.

12 Q. What topics were covered?

13 A. Loss mitigation, escrow, homeowners insurance, and I would
14 get bounced back and forth between all those different
15 departments.

16 Q. And was escrow an ongoing conversation?

17 A. Yes.

18 Q. Was there any conversation about repayment agreements?

19 A. The only repayment agreement we had was with Jenna Williams
20 for 355, and they broke that. They broke that agreement.

21 Q. Okay.

22 MR. MARGOLIS: May I approach, Your Honor?

23 THE COURT: Go ahead.

24 Q. I refer you to Exhibit number 5. Please look at that, and
25 please state for the record what that is.

1 A. It's the re -- excuse me. It's the repayment agreement and
2 the check that they sent back.

3 Q. Okay. So based on this, GMAC said you pay 355 for 3
4 months, and we'll do whatever for you.

5 A. Well, that was at the end of the typo debacle, and I was
6 working -- actually Dick Lugar got involved. Fannie Mae got
7 involved.

8 THE COURT: Senator Lugar?

9 THE COURT: Yes. Senator Lugar. I'm sorry. Senator
10 Lugar got involved. And we got in touch with Jenna Williams
11 and the -- I don't -- she was, like, a special office. She was
12 our contact person.

13 THE COURT: At GMAC?

14 THE WITNESS: At GMAC, yes.

15 A. And so when Jenna Williams got involved, and we discovered
16 the typo, which wasn't until December of 2009. It was late.
17 We were behind. Because they had been wanting 886.36, and we
18 couldn't afford to pay that. So the 355 special payment came
19 when -- because she was working with Fannie Mae. She was
20 working with Joe Scott. I was contacting Joe Scott and Jenna
21 at the same time.

22 She set up the 355 payment until Bill could get back to
23 work, because he had just had surgery. And so that was -- he
24 was supposed to go to back to work at the end of May, and so
25 that last payment in May was --

1 THE COURT: End of May, 2010?

2 THE WITNESS: Of 2010. It was supposed to help us
3 until he started getting a full paycheck again, because he was
4 just getting the short-term disability, which had they not done
5 the typo, this would have all been taken care of, and wouldn't
6 have had disability income to worry about, at this point.

7 But she -- she set up the 355. We made those
8 payments. We paid bills in May. They sent the check back and
9 demanded 700 -- almost 800 dollars. And when that happened,
10 she said that, you know, she couldn't guarantee that we would
11 get any other offers and that we would be subject to
12 foreclosure. And again, we still wanted to save the property.
13 So we let all those checks bounce that we had already paid out,
14 just to make sure that GMAC got the full -- even though it was
15 supposed to be 355.

16 BY MR. MARGOLIS:

17 Q. Okay. They returned the check for 355?

18 A. Yeah. Out of -- out of the blue.

19 Q. Okay. And they kept the two other checks for 355,
20 correct?

21 A. Yes. Yes, they did.

22 Q. Did GMAC ever account for those, say how they were
23 applied, anything like that?

24 A. No, they never accounted for any of the --

25 THE COURT: What does this have to do with the RESPA

1 claim?

2 MR. MARGOLIS: It goes to the damages and the
3 financial impact and pressure they put on them.

4 THE COURT: Let's get through this stuff.

5 MR. MARGOLIS: Okay.

6 THE COURT: I don't think this is really connected to
7 the RESPA claim.

8 MR. MARGOLIS: Okay.

9 Q. With regard to medical issues, were there medical issues
10 with your husband?

11 A. Yes.

12 Q. And what were they?

13 A. He had a heart attack the day he made his last payment.

14 THE COURT: Say that again?

15 THE WITNESS: He had a heart attack the night that he
16 made his last payment to GMAC.

17 THE COURT: When was that?

18 THE WITNESS: May 14th, 2011. Well, it would've been
19 early morning, May 15th.

20 Q. Okay. At this point I would like to show you medical
21 bills. I'm asking you to look at Exhibit number 23? That
22 is -- is that the main bill?

23 A. Yes.

24 Q. Okay. And that's -- and that was for how much?

25 A. Which one, the 68-?

1 Q. Yes.

2 A. 68,194.

3 Q. And were there other bills that were associated with that
4 heart attack?

5 A. Yes. 1,322. There would have been the ambulance rides.

6 Q. And was there a radiology bill?

7 A. Yes. He had to have a stent put in. I mean, there's
8 still his medication that he has to take.

9 Q. Right. And was there another bill?

10 A. Um-hum.

11 THE COURT: If you're referring to exhibits, you
12 better tell everybody what exhibits you're referring to --

13 MR. MARGOLIS: Okay.

14 THE COURT: -- Mr. Margolis.

15 MR. MARGOLIS: I'm sorry. It's -- that was Exhibit
16 26, 25, and 24.

17 Q. Is it your opinion that the actions of GMAC were
18 proximately the cause for your husband's heart attack?

19 A. Yes.

20 Q. Explain that?

21 A. They would get him so worked up. I mean, he -- because
22 they had lied so much in the past, he got tired of dealing with
23 them, so I dealt with them. It was constant stress; constant.
24 Every day they would call. And I never -- whenever I was home,
25 I would answer the phone and I would go through the whole thing

1 again about the escrow shortage not being correct, about all of
2 it.

3 Q. Okay. Did it do any good?

4 A. No. Once we got -- I mean, with after the Jenna, in 2010,
5 we -- we took the modification because we didn't think we had
6 any other choice. And we stayed current until December. And
7 life happened. And we were one month behind. And I called
8 them and I asked them to -- because we were going to -- we were
9 borrowing from the rest of what my husband had left in
10 retirement to get them caught up. I told them we had to wait
11 until a specific date, and I would call in -- and you can look
12 at the servicing notes -- I called in that day and I caught it
13 up. But they -- they said they wouldn't report us to the
14 credit bureaus, but they did anyway. Because they kept saying
15 stay current, stay current, you can refinance into a better
16 loan. Stay current.

17 So we fought to stay current, and we were trying to
18 refinance through GMAC, but the water -- the mortgage was
19 underwater and they wouldn't do it. And so that let us through
20 until my husband had the heart attack. And after he had the
21 heart attack and the medications were so -- because he had to
22 be on Plavix for so long afterwards because of the stent.
23 That's when I applied for the Rural Development loan. It was
24 denied. I appealed it, and I won. But --

25 THE COURT: Did you ever take -- did you ever get a

1 loan from --

2 THE WITNESS: They wouldn't let us. GMAC wouldn't
3 short sell it back to us. So they wouldn't. They didn't want
4 to take the 10,000 that Rural Home Development was offering.

5 Q. Was there an adverse effect on your husband's pension
6 retirement?

7 A. Yes, it's gone.

8 Q. Please tell the judge what happened?

9 A. Well, the first -- the first one was a while back; but all
10 of that went to GMAC to keep them from foreclosing before we
11 asked for the modification.

12 Q. Was that the loan that was taken out?

13 A. That would've been the first one. And the second one
14 was --

15 Q. Okay. Okay.

16 MR. MARGOLIS: May I approach? I'd like to show
17 Exhibit 10.

18 Q. And is that the document to which you refer?

19 A. The one -- this one is the second one. We had to take out
20 that because they had shot our credit so bad, our van blew up
21 and we needed to get a new vehicle, because we had small
22 children. And we had to -- we had to take all the money out of
23 the retirement to purchase a vehicle because we couldn't get
24 credit.

25 Q. How much was that?

1 A. It was 10,000.

2 Q. Okay.

3 A. And not all of that went to the vehicle. That went to
4 other bills and to catch GMAC up when -- what I was just
5 explaining, in December, when they said that they wouldn't
6 report us, and they did. So part of that went to GMAC. Part
7 of it went to buy a vehicle and to pay -- to pay bills and to
8 try to get caught back -- because those insufficient check
9 fees, they -- they were there for a long time. It was really
10 hard to get rid of all of the negative impact that those
11 brought.

12 Q. Now, at page 2 of Exhibit 10 shows a zero balance on the
13 total investment account?

14 A. Yes.

15 Q. And it also shows \$26,227.40 that was gone. Please tell
16 the judge what happened?

17 A. We had to use it to survive. We couldn't get credit
18 anywhere else.

19 Q. How was that tied to the actions of GMAC and their agents
20 and employees?

21 A. They were real -- well, they wouldn't let us make a
22 mortgage payment. That was a big one. Them not letting us
23 make a mortgage payment and not letting us make our original
24 mortgage payment, the real mortgage payment. I had one
25 representative ask me well, can't you pay the 886.36? And I

1 said no, we can't. We couldn't afford the 657.25, we sure
2 can't afford 886.36. But more importantly, I refused to agree
3 to something that I knew was incorrect. I knew it wasn't
4 right, and there was no way they were going to get me to pay
5 886 and basically say okay, I know you're wrong, but I'm going
6 to pay you anyway, at the detriment to my kids.

7 We had already had to go to the trustee for clothes and
8 food and electric.

9 Q. How did the actions of GMAC create and/or compound that
10 situation?

11 A. The insufficient check funds were really a big thing.
12 That -- that did a lot of damage. And it was at that point
13 that we had to go to the trustee for the electric and the food
14 and --

15 THE COURT: What trustee?

16 THE WITNESS: Jackson Township Trustee in the County.

17 THE COURT: Okay.

18 Q. And okay. Now, did GMAC ever refuse payments from you?

19 A. Yes.

20 Q. When?

21 A. June, July, November, December --

22 THE COURT: What year?

23 A. -- January, February -- June, July of 2009. December of
24 2009. January of 2010. And February of 2010. It wasn't until
25 we started making the special payment agreement that we had

1 with Jenna for 355, that we made another payment. And they
2 refused the 657 all that time, even though Romeo said at the
3 very beginning we could opt out. They refused to let us opt
4 out, and they refused to let us make our mortgage payment.

5 Q. Did you ask and seek a resolution of this problem?

6 A. Yes, we wanted to get rid of the modification. And I had
7 one gentleman tell me that if we got rid of the modification,
8 all of the late fees would be due, the escrow shortage would be
9 due immediately, which didn't exist, and the payment would go
10 back to 886.36. And I said wait a minute, the payment was
11 never 886.36.

12 Q. Okay. So in all this time, was the escrow shortage ever
13 addressed?

14 A. No.

15 Q. Was it ever corrected, modified, changed, altered,
16 whatever?

17 A. No.

18 Q. And that -- okay. I'd like to show you Exhibit 8. Please
19 state what that is for the record?

20 A. That is a qualified written request from Ocwen in 2013,
21 which shows this exact same information that GMAC was -- was
22 giving us back in 2009.

23 Q. Was it your -- so did GMAC ever resolve this issue?

24 A. I don't believe so. No.

25 Q. And then -- and then the issues you raised in the October

1 30th, 2009 qualified written request, were they ever dealt with
2 affirmatively and just eliminated?

3 A. No, they never addressed the escrow shortage that didn't
4 exist.

5 Q. In the subsequent qualified written request, did you
6 repeat those?

7 A. Yes.

8 Q. Did it do any good?

9 A. No.

10 MR. WISHNEW: Your Honor, objection as to form. Mr.
11 Margolis said a "qualified written request". Which ones are we
12 talking about?

13 MR. MARGOLIS: Oh, oh.

14 THE COURT: There's only one in issue in this trial,
15 Mr. Margolis.

16 MR. MARGOLIS: I understand.

17 THE COURT: And that's the October 30th, 2009 letter.

18 MR. MARGOLIS: Yes. Okay.

19 Q. But the issues that were raised, that specifically
20 included the escrow shortage. Was that ever resolved?

21 A. No.

22 Q. When GMAC sent you a statement or whatever, do you believe
23 that's true, accurate, and correct?

24 A. No, because it reflected the 886.36 payment that never
25 existed.

1 Q. What about the escrow shortage?

2 A. That was included in the 886. It was --

3 Q. Was there -- were there fees and costs and other things
4 that were included?

5 A. The late fees that were accruing, yes.

6 Q. Okay. Did you inquire with GMAC for an explanation what
7 those were?

8 A. Yes. And I also asked GMAC to show me where the trial
9 period money went, because according to their contract, 150
10 dollars of it was supposed to be set aside specifically for
11 escrow.

12 Q. What was the response?

13 A. I still don't know what they did with that money.

14 Q. Well, what -- did any agent or employee of GMAC call
15 you --

16 A. No.

17 Q. -- and say we did X, Y, and Z?

18 A. No.

19 THE COURT: How does that relate to the RESPA request,
20 the October 30th, 2009 letter? I don't see these --

21 THE WITNESS: It would --

22 THE COURT: -- issues addressed in that letter, Mr.
23 Margolis.

24 THE WITNESS: It would have been in the history -- the
25 payment history. It didn't show the 150 dollars going to

1 escrow. It showed zero dollars going to the escrow.

2 THE COURT: Let's go, Mr. Margolis.

3 MR. MARGOLIS: Okay.

4 Q. At this time, what's your current situation as far as
5 GMAC?

6 A. We don't have -- I mean, we don't have anything other than
7 this case right here, nothing.

8 Q. Okay. In December of '14, there was a transfer to Ocwen.

9 MR. WISHNEW: Objection, Your Honor.

10 THE COURT: It's the wrong date, Mr. Margolis.

11 Q. Okay.

12 MR. WISHNEW: It was February 2013, which explains
13 why -- I won't testify, Your Honor.

14 THE COURT: In February 2013, Ocwen closed on the
15 purchase of the ResCap loan servicing platform. Servicing
16 rights were transferred. I don't want to hear about this,
17 Mr. --

18 MR. MARGOLIS: Okay. All right.

19 THE COURT: -- Mr. Margolis.

20 MR. MARGOLIS: All right.

21 Q. So we've covered damages for financial, correct?

22 A. Yes.

23 Q. We've covered damages with regard to the diminishment of
24 the value of the property?

25 A. Yes.

1 Q. We've covered damages with regards to medical issues that
2 were caused with regard specifically to the heart attack?

3 A. Yes.

4 THE COURT: Could I ask you this? Did you have health
5 insurance?

6 THE WITNESS: I'm sorry?

7 THE COURT: Did you have health insurance?

8 THE WITNESS: We did have health insurance.

9 THE COURT: So how much of the hospital and doctor
10 bills did you and your husband -- were you actually charged?

11 THE WITNESS: We were getting like twenty percent.
12 We -- they paid eighty.

13 THE COURT: Yeah, I mean, I don't know the exact
14 figure, but it looked to me in total it was less than 5,000
15 dollars you were actually charged?

16 THE WITNESS: It was probably closer to 10-, because
17 he --

18 MR. WISHNEW: Your Honor --

19 THE WITNESS: -- went to different hospitals.

20 THE COURT: Well, I'll see what Mr. Wishnew wants --
21 if he wants to cover this, but --

22 MR. WISHNEW: I'll bring it out in cross.

23 THE COURT: Okay. Go ahead, Mr. Margolis.

24 MR. MARGOLIS: Okay.

25 BY MR. MARGOLIS:

1 Q. Based on the actions with regard to the October 30th,
2 qualified written request and those specific items, and the
3 content and the figures that we have put forth, are you aware
4 of any other actual damages suffered as a direct and proximate
5 cause from GMAC's actions following the October 30th, 2009
6 letter?

7 A. Monetarily, no.

8 Q. Has that affected you in a nonmonetary way?

9 A. Yes. Every day.

10 Q. Please explain that?

11 A. My kids -- well, it's horrible to have a five and a three-
12 year-old watch you cry because you can't get people to
13 understand that they are wrong. They're wrong. There was
14 never an escrow shortage and our payment never 886.36. And to
15 have people knocking on the door doing property inspections
16 with my kids there. They didn't understand what was going on.
17 To them, they thought they were coming to kick us out of the
18 house.

19 Q. Now, as I understand it, the -- when Ocwen assumed it the
20 amount was now, 90,000 dollars?

21 A. And that's not -- it's not correct.

22 Q. But --

23 A. Yes.

24 Q. -- Ocwen is simply saying it's --

25 A. Somewhere in the area.

1 Q. -- saying the amount is 90,000, correct?

2 A. Correct.

3 Q. Okay. Have you -- did you ever receive the information to
4 address that with Ocwen from GMAC --

5 THE COURT: I don't understand your question.

6 MR. MARGOLIS: Okay.

7 Q. Did GMAC ever explain what they did prior to them
8 transferring the mortgage?

9 A. No. I still, to this day, don't know how they came up
10 with the escrow shortage amount.

11 Q. Has that carried over to Ocwen and whoever else --

12 A. If you --

13 MR. WISHNEW: Objection, Your Honor.

14 A. -- look at it --

15 THE COURT: Sustained.

16 MR. MARGOLIS: Okay.

17 Q. Okay. The October 30th -- it embraced problems with their
18 record-keeping, correct?

19 A. Yes.

20 Q. Okay. And that included their June 10th, letters to you,
21 the two of them?

22 A. Yes.

23 Q. Okay.

24 THE COURT: Go ahead. Let's go.

25 Q. Okay. There are two --

1 THE COURT: You're going to be here for days at the
2 rate you're going, Mr. Margolis.

3 A. Yes, I --

4 THE COURT: I'm just telling you.

5 Q. Okay. There are two -- one is Homecoming and one is --

6 A. One is GMAC.

7 Q. -- GMAC. And one says "as of" --

8 THE COURT: What exhibit are you looking at?

9 MR. MARGOLIS: Okay. And then --

10 THE WITNESS: What exhibit?

11 THE COURT: What exhibit, Mr. Margolis?

12 MR. MARGOLIS: It's 3.

13 Q. And then you have another one with only GMAC --

14 THE COURT: If you're going to identify exhibits,
15 you've got to identify them by exhibit number. I can't read
16 your mind, and I have to have a clear record.

17 THE WITNESS: What's this number?

18 THE COURT: What exhibit are you looking at?

19 MR. MARGOLIS: Oh, I'm at 3. It's two debt validation
20 letters.

21 THE COURT: Okay.

22 Q. The content of these do not match?

23 A. Correct.

24 Q. Homecomings was a GMAC company?

25 A. It was actually in their objection where they explained

1 the difference in the two amounts. So I know today what
2 those -- the differences is between the two. But it wasn't
3 until this court got involved that they put the discovery in
4 and explained that it was the G -- the Homecomings didn't have
5 the late fees that GMAC showed.

6 Q. Well, but same database, correct?

7 A. Yes.

8 MR. WISHNEW: Objection, Your Honor.

9 THE COURT: Well, you don't know that. Come on, now.

10 MR. MARGOLIS: I -- okay.

11 Q. But the one with Homecomings and GMAC, this shows a zero
12 escrow balance --

13 A. It does show zero escrow.

14 Q. -- and the other one shows late charges, et cetera?

15 A. Yes. The zero escrow, yes.

16 MR. MARGOLIS: Thank you. I think that covers it.

17 THE COURT: All right. Cross-examination?

18 MR. WISHNEW: Thank you, Your Honor. Your Honor, if I
19 could approach? I have a binder.

20 THE COURT: Yes, go ahead.

21 MR. WISHNEW: Thank you.

22 CROSS-EXAMINATION

23 BY MR. WISHNEW:

24 Q. Good morning, Ms. Futrell.

25 A. Good morning.

1 Q. My name is Jordan Wishnew, I'm counsel to the ResCap
2 Borrower Claims Trust, who is the successor-in-interest to
3 Residential Capital and its subsidiaries, which included GMAC
4 Mortgage and Homecomings.

5 Just a few questions about your testimony with Mr.
6 Margolis.

7 A. Okay.

8 Q. Were you -- did you file a proof of claim in this
9 bankruptcy?

10 A. Yes. My husband did.

11 Q. Your husband did, but not you?

12 A. Yes.

13 Q. Okay. And is your name -- are you a signatory to the note
14 for this underlying loan?

15 A. No. But I was the one home and I was the one that
16 spoke --

17 THE COURT: I can't hear you. I'm sorry. You have to
18 speak a little louder.

19 A. I was the one at home, and I'm the one that spoke with
20 GMAC.

21 Q. Okay. Are you a signatory to the underlying mortgage for
22 this loan?

23 A. No.

24 Q. All right. Are you a medical doctor?

25 A. No.

1 Q. Do you have any medical training?

2 A. I'm a mother.

3 Q. Okay. I respect that, absolutely.

4 With regards to the cause of your husband's heart attack,
5 is there any report being offered to substantiate the reasons
6 for his heart attack?

7 A. There are several reports that show stress kills.

8 Q. Are they before the Court today?

9 A. No.

10 Q. Okay. What is your and your husband's occupation?

11 A. I am a kindergarten aide/teacher.

12 Q. And your husband's occupation?

13 A. He's disabled, he doesn't work.

14 Q. Okay. And how long hasn't he worked?

15 A. Since 2011 or -- no -- yeah. 2012.

16 Q. Is that subsequent to his heart attack, he was on
17 disability?

18 A. It was after his heart attack.

19 Q. Okay. And so prior to his heart attack, what was his
20 occupation?

21 A. Steel fabrication.

22 Q. Steel fabrication?

23 A. Um-hum.

24 Q. Would you say that's a stressful job?

25 A. Not really. Strenuous.

1 Q. Not at all?

2 A. Strenuous, but not stressful.

3 Q. Strenuous?

4 A. Strenuous, but not stressful.

5 Q. But strenuous can cause stress, correct?

6 A. Is it before the Court to --

7 Q. I'm sorry?

8 A. Is it before the Court today?

9 Q. Is what before the Court?

10 A. Whether it can cause -- can cause stress? You asked me
11 the same question.

12 Q. You've opined today that GMAC mortgage was the cause of
13 your husband's heart attack. I'm trying to explore the basis
14 for your opinion. So my question is, your testimony is that
15 your husband was a steel fabricator?

16 A. Yes.

17 Q. It was strenuous?

18 A. It was strenuous.

19 Q. And so my question is, could that strain be a factor
20 contributing to a heart attack?

21 A. It could.

22 Q. Okay. And life in general with a family, children, is
23 also strenuous, correct, and stressful?

24 A. It is when your mortgage company says that you owe but you
25 don't. So --

1 Q. Okay. If I could take you to the medical bill that Mr.
2 Margolis testified -- sorry, mentioned. I think it's Exhibit
3 22 in the spiral binder.

4 A. Yes.

5 Q. So --

6 THE COURT: Hmm. I don't think so. 23, 24, 25, and
7 26 are the --

8 MR. WISHNEW: I apologize, Your Honor.

9 Q. If I could ask you to --

10 MR. WISHNEW: If I could approach for a moment?

11 A. Is it 23? Yeah.

12 Q. So this is the Lutheran Hospital invoice, due date on the
13 top of it is July 8th, 2011?

14 A. Um-hum.

15 Q. Okay.

16 THE COURT: You have to answer yes or no. You
17 can't --

18 A. Yes.

19 THE COURT: Thank you.

20 Q. Okay. And on the left-hand side, middle of the page, what
21 is the total charges?

22 THE COURT: I can read it. Come on. Let's --

23 MR. WISHNEW: I'm sorry.

24 THE COURT: The total charge is \$68,194.68

25 Q. The bottom line is, would you agree that there were

1 insurance payments of 15,048 dollars and change?

2 A. Yes, our -- it says pay this amount, it's 3,762.

3 Q. Okay. So the out-of-pocket cost to you and your
4 husband -- I'm sorry, the out-of-pocket cost to your husband
5 was \$3,762.16?

6 A. Just for the room, yes. That wasn't for the procedures.

7 Q. Okay. And the second page of that same exhibit dated
8 September 21st, 2011 --

9 THE COURT: I only have one page in this exhibit. Are
10 there two pages to this exhibit? Wait, let me just double -- I
11 only have one page. Hold on.

12 Go ahead. My law clerk has given me her copy of it.
13 My copy only has the one page. But go ahead.

14 MR. WISHNEW: I apologize for the mix-up, Your Honor.

15 Q. Is the amount under "Please pay this amount: \$1,322.58"?

16 A. Yes, that would've been for the cardio and --

17 Q. Okay.

18 A. -- and his EKGs.

19 Q. Okay, very good. And it was your testimony that GMAC
20 Mortgage did not resolve the escrow issue going back to June
21 2009, correct?

22 A. Correct, yes.

23 Q. Okay. If I could ask you to turn to Exhibit J in the hard
24 binder?

25 A. Okay.

1 Q. Have you seen this document before today?

2 A. Is it dated 5/20/2010?

3 Q. Yes. It's addressed -- it's a document from GMAC Mortgage
4 addressed to your husband, William J. Futrell?

5 A. Yes.

6 Q. Okay. And if I could ask you to turn to the last page of
7 that exhibit? Is that your husband's signature?

8 A. Not really. No.

9 Q. Not really?

10 A. No, he doesn't have the underlined little loop in there.

11 Q. I'm sorry, the loop where?

12 A. On his F. That F, it looks like.

13 Q. Okay. Let's see.

14 (Pause)

15 Q. If I could ask you to turn to Exhibit DD in the hard
16 binder? This is the response to interrogatories from the
17 ResCap Borrower Claims Trust executed on September 25th, 2015
18 by William J. Futrell.

19 A. Okay. I see the last page. Yes, that's my husband's
20 signature.

21 Q. That's your husband's signature?

22 A. Um-hum.

23 Q. And you're telling me that the signature on Exhibit J is
24 not the same --

25 THE COURT: Let's not spend time on it.

1 MR. WISHNEW: Okay.

2 THE COURT: I'll conclude after comparing the
3 signatures if they're the same.

4 MR. WISHNEW: Fair enough, Your Honor.

5 Q. If I could take you to the USDA letter dated August 10th,
6 2011? I believe it's Exhibit 20 in the spiral binder.

7 A. Okay.

8 Q. So --

9 MR. MARGOLIS: Excuse me. May I approach with a copy
10 of --

11 THE WITNESS: I've got it.

12 THE COURT: She has it.

13 MR. MARGOLIS: Oh, I'm sorry.

14 Q. According to this letter, were there more than one
15 reason -- was there more than one reason for the USDA denying
16 your Rural Development Assistance?

17 A. The -- yeah, there were two.

18 Q. Was there two, or were there three? I refer you to the
19 second and third paragraph of that letter: "1) After
20 carefully analyzing the appraisal of the property, we are
21 unable to take favorable action. The specific reasons for our
22 decision are: the property appraised at 30,000 dollars?"

23 A. Right. The mortgage was --

24 THE COURT: No, no, no.

25 Ask your question.

1 MR. WISHNEW: Thank you. I'll continue, Your Honor.

2 Q. "2) the property is not eligible; 3) your credit history
3 was not acceptable." So clearly there was more than one reason
4 beyond the credit history that the USDA denied your rural
5 assistance, correct?

6 A. Correct, but they all went back to GMAC.

7 Q. Sorry -- and how was GMAC responsible for the value of the
8 appraisal of your property?

9 A. It was underwater. And we couldn't get any credit to fix
10 it, which is what --

11 Q. Okay. Do you contest that -- your testimony earlier that
12 the house was worth 60,000 dollars, when was that -- when was
13 the house purportedly worth 60,000 dollars?

14 A. In 2007.

15 Q. Okay. But the balance of your loan was 76,000 dollars?

16 A. Yes, it was underwater.

17 Q. Okay. So it was underwater in 2007, and continued to
18 remain underwater through 2011, correct?

19 A. Yes.

20 Q. Okay. Thank you.

21 A. It deteriorated.

22 Q. Okay.

23 A. The cost -- the value of the property was way less than
24 what we owed on it.

25 Q. Okay.

1 A. We didn't take out any more money on it.

2 Q. Just generally, in --

3 MR. WISHNEW: I won't go very far into this, Your
4 Honor.

5 A. And just to clarify, when we got the 2007 appraisal, GMAC
6 told me that it was because of the -- all the surrounding
7 houses that had gone into foreclosure. So it wasn't something
8 that we did to make it that way.

9 Q. Right. So in -- all the surrounding houses going into
10 foreclosure in 2007 --

11 A. Brought it down to 65 --

12 Q. -- was because were on the preci --

13 THE COURT: Let him -- stop, stop, stop.

14 Ms. Futrell?

15 THE WITNESS: Yes.

16 THE COURT: When Mr. Wishnew's asking a question, you
17 wait until he finishes, and then you can answer the question.
18 Don't interrupt. I know you think you know what the question
19 is and you want to answer it right away, but courtesy and court
20 rules require you wait until Mr. Wishnew has finished his
21 question, and then you can respond. I'm not going to let him
22 interrupt you. Okay?

23 THE WITNESS: Okay.

24 THE COURT: Go ahead, Mr. Wishnew.

25 MR. WISHNEW: Thank you, Your Honor.

1 Q. So going -- in 2007, would you agree with me that the
2 country as a whole was on the precipice of economic collapse,
3 and property values were generally going down?

4 A. Yes.

5 Q. Okay. So then your town was no different than anywhere
6 else in America?

7 A. Correct. And I --

8 Q. Okay. Okay.

9 MR. WISHNEW: Let's see.

10 Just one moment to confer with my colleague, Your
11 Honor?

12 Your Honor, I have no more questions for the witness.
13 I'll address the issues on direct of Ms. Lathrop.

14 THE COURT: Okay, any further questions?

15 MR. MARGOLIS: Just one, Your Honor.

16 THE COURT: Go ahead.

17 REDIRECT EXAMINATION

18 BY MR. MARGOLIS:

19 Q. With regard to the question on the USDA and the credit,
20 has the issues that have flowed from the credit and the impact
21 of GMAC had an impact?

22 A. They're not over. We're still dealing with them. Getting
23 better, but we're still dealing with them.

24 Q. So is it a fair statement that the value and the condition
25 are two separate conversations?

1 A. Yes.

2 Q. Thank you.

3 THE COURT: I just want to ask you a few questions.
4 From what I've read, it looks like you missed a first payment
5 in December of 2007?

6 THE WITNESS: Um-hum.

7 THE COURT: Was that true?

8 THE WITNESS: Yes.

9 THE COURT: And I didn't go through the entire payment
10 history, but you said you always tried to stay just one payment
11 behind. Were you making payments after December 2007?

12 THE WITNESS: Yes, every month.

13 THE COURT: And in June of 2009, how many payments
14 were you behind?

15 THE WITNESS: One.

16 THE COURT: All right. I have no further questions.
17 Thank you. You can go back to the table over there. Thank
18 you.

19 Just leave the exhibits there. Leave everything
20 there.

21 All right, Mr. Margolis, call your next witness.

22 MR. MARGOLIS: I'd call William Futrell to the stand.

23 THE COURT: Okay, Mr. Futrell, come on up. If you
24 would turn and face the reporter and raise your right hand,
25 you'll be sworn, okay?

1 (Witness sworn)

2 THE COURT: Okay, you could have a seat. If you'd
3 like some water in the pitcher?

4 Go ahead, Mr. Margolis.

5 MR. MARGOLIS: Thank you.

6 THE COURT: Let's start by getting him to affirm that
7 his witness statement is true and correct, okay?

8 MR. MARGOLIS: Yes.

9 DIRECT EXAMINATION

10 BY MR. MARGOLIS:

11 Q. Is the summary that was prepared and executed and
12 proffered to the Court true, accurate, and correct?

13 A. Yes, they are.

14 THE COURT: Okay. Go ahead, Mr. Margolis.

15 MR. MARGOLIS: Okay.

16 Q. Okay, so the first contact you had with Homecomings/GMAC
17 was in what year?

18 A. Okay. It was around 2001, I got it through Aegis, and
19 they automatically sold it to Homecomings. So around 2001,
20 beginning of the year, I believe.

21 Q. Okay. And your payments were what?

22 A. 657.25 monthly.

23 Q. Okay. At what point did it commence with Homecomings/GMAC
24 about a loan mod?

25 A. Homecomings/GMAC transferred servicing rights, I believe,

1 in '09, and I was at work most of the time.

2 THE COURT: I'm sorry, you were at work?

3 A. I worked. I worked at a factory. I set molds and worked
4 on presses. And so I spent a lot of my time there. And I --
5 once they took over, I would make my payments, and if I -- I
6 knew that in my heart that I sent the payment in within three
7 weeks' time, so they should have gotten it on time. But I
8 started getting late fees. And that --

9 THE COURT: When was --

10 A. -- was the beginning of the problem --

11 THE COURT: -- just tell me when that was,
12 approximately?

13 THE WITNESS: I'm not sure. I'm assuming 2008, 2009,
14 2010. I'm not real good on time, because most of my time was
15 at the factory.

16 Q. How would you send the payments to GMAC/Homecomings?

17 A. Well, when I -- when I sent in a payment, and I saw that I
18 was getting a late fee for it, because it wasn't there on time,
19 and I knew that it had plenty of time to get there, I started
20 sending them certified receipt requested mail, and it cost me
21 extra money, but at least I didn't have to worry about that
22 late fee.

23 And eventually I got to the point where I could call in to
24 the mortgage company and use their service to pay online or on
25 phone which the service -- and I didn't know this at the time,

1 but I figured it out through doing it, I knew it cost, but it
2 was \$7.50 to make a payment by phone, but the thing is, that
3 saved me money, because that was less than the certified
4 payments I was making to the post office.

5 But the thing is, if some individual would open --
6 operate -- worked there would pick up the phone, it cost me
7 \$12.50. It cost me an additional five dollars just to talk to
8 the person to make my payment. And I had no control over if I
9 talked to them or not. So I could not save that extra five
10 dollars just by talking to a machine. But I felt I had no
11 recourse but to make sure that the payment got there.

12 THE COURT: Mr. Margolis, this is a trial about the
13 October 30th, 2009 --

14 MR. MARGOLIS: Okay.

15 THE COURT: -- RESPA request.

16 MR. MARGOLIS: Okay.

17 Q. Okay. The issue really became a problem in '09 with the
18 June 17th, '09?

19 A. Yeah -- just -- yeah.

20 Q. And it was in that document where there was the issue of
21 the escrow shortage?

22 A. Yes, this -- the escrow shortage was a major problem and
23 still is.

24 Q. And the 12.97 stated on the document and the 15-whatever,
25 it's stated in the service notes, correct?

1 A. Yes.

2 Q. And was that ever resolved?

3 A. No.

4 Q. What efforts did you personally make to seek to get that
5 resolved?

6 A. Well, when this became an issue, and I was having problems
7 with the escrow amount, we tried to get a modica --
8 modification. And the whole point was, they wanted 150 dollars
9 a month for escrow. Okay. That's over 1,500 dollars a year.
10 I paid like 600, and I know this, and I tried to convince this
11 to them that hey, this is a problem. And they still won't
12 listen.

13 They come up with these numbers that the 1,249.71, you
14 divide that by twelve months, it's over 100 dollars a month.
15 We'd just established that I paid 40 a month, okay. This had
16 been going on for some time. I tried to get them to
17 understand, and they sent it back and regurgitated another one
18 with the same type of escrow.

19 Ended up, sometime we spoke with you, and I believe it was
20 you who spoke to Senator Richard Lugar, who then called the
21 U.S. Treasury Department and spoke with Mrs. or Ms. Lynn Jones
22 (ph.), who then got us in touch with a Jenna Williams of the
23 executive offices of Homecomings, or GMAC -- same people,
24 whatever -- and that's where they decided, oh, there's a typo.
25 Well, that typo was a "one" in front of a "352.53". But if you

1 look closely, the one -- there's a 37 -- it's either 37 cents
2 or 53 cents on the back of 352 that I paid for insurance. So
3 there was three digits wrong, not just the one. But that was
4 their answer. There's a typo.

5 They had me pay 325 a month for three months. I paid them
6 early. That third payment, they sent back. But that is the
7 first chance, by doing those things, that I got their attention
8 to hey, there's something wrong. Their opinion was that it was
9 a typo. My opinion is, they're trying to charge me money I
10 don't owe.

11 Q. What is --

12 A. And a --

13 Q. Was the matter of the insurance and the "one" was that
14 resolved within sixty days?

15 A. No.

16 Q. Do you know how long it took?

17 A. It's still ongoing, as far as I can tell, I mean.

18 Q. And did that have something to do with the force-placed
19 insurance?

20 A. There was a lot going on, then. Yes. The force-placed
21 insurance was brought up. I believe that they denied it. And
22 I didn't keep up with this. It was too much for me. I was
23 working, and I had a responsible job. I was lead maintenance
24 man, and I was in charge of other guys having to set presses to
25 keep people working. And so I was -- I let my wife take care

1 of that, because I had enough on my plate.

2 I mean, if it weren't to the point that it was, where it
3 was so -- so extreme and so many things going wrong, it might
4 have been easier for -- easy enough where I could have dealt
5 with it, but I was getting mad. I was -- I even told people,
6 hey, I want to deal with somebody face-to-face. I want -- what
7 do I do? How do I get out of this? And I wasn't getting any
8 satisfaction.

9 Q. Did -- I'm sorry.

10 A. And I -- as you notice, I'm more primal than my wife. But
11 I'm fine.

12 THE COURT: Take it easy. Relax.

13 Q. Okay. Were you aware of efforts to get GMAC to address
14 these issues?

15 A. Yeah. My wife was on the phone daily. And there were
16 times they would call me daily. When I'd come home, they'd
17 call any hour of the night, every day of the week, a different
18 person every time. I could talk to two different people in
19 that organization in the same day. And I even asked them,
20 don't you people talk to one another? Don't you know what's
21 going on in your own company? I mean, and that's what I saw,
22 because the -- it was like nobody knew what was going on.
23 Nobody could give me an answer. And that's kind of why we're
24 here, because nobody gave me an answer.

25 Q. With regards to the repayment agreement in 2010 for the

1 three payments of 355, were you ever provided an explanation
2 for what happened to the other two payments of 355?

3 A. No. I wasn't even -- when that was paid, I was expected
4 to go in to pay my mortgage and have all this nonsense that
5 we've been dealing with, gone. And it never happened. It
6 just -- that 355 payment ended, a check came back, never heard
7 why. Don't know what they did with the money. And I know that
8 my mortgage never changed for the better. I mean, I still have
9 no sense, coming out of it.

10 Q. What about the content of the loan modifications? Were
11 there issues that bothered you?

12 A. Yeah, the first -- first couple was the excessive amounts
13 of escrow and the fact that I could not get it through to them
14 that this was wrong. And eventually, they figured out, oh,
15 yeah, okay, it's like forty a month, so they started -- on
16 the -- on a payment of -- it came out to like 705 that I had
17 been paying, out of that 705, 48 of that, I believe, was for
18 escrow, which 40 of it was for escrow, and the other 8 was for
19 a back escrow shortage, which I never had.

20 Granted, I know for an escrow they have to have money, and
21 I could have that shortage, if I don't put it up. And I get
22 that's where that's coming from. But these amounts, the
23 figures were always extreme and never answered.

24 Q. To your knowledge, did GMAC ever acknowledge and/or
25 explain why the service notes had a different escrow shortage

1 than the June 17th document?

2 A. By that time I -- no, they never explained to me. But by
3 that time, I don't think they would have, if I would have
4 tried. I was pretty well fit to be tied, and unfortunately, I
5 pushed it off on my wife rather than dealing with it myself.

6 Q. Okay. And let's talk about the damages flowing from this.
7 There was your pension 401(k)?

8 A. Yes, that's gone.

9 Q. Okay. What -- what was your -- what was the effect of
10 GMAC's actions on your pension 401(k)?

11 A. Well, the fact that none of this ever got resolved, no
12 answers to why money went here or where my money was going and
13 why I wasn't getting anywhere, and not knowing what was going
14 on, my money went to pay them when they needed it. Just -- I
15 jumped through hoops for them. I thought, okay, we're going to
16 get this mortgage, we're going to pay for it, we're going to --
17 I didn't want to worry about my kids. Let's face it. My dad's
18 ninety-two. He gave me and my family a house all my life, and
19 I want to do the same for mine. And it looked like it wasn't
20 happening. And I didn't like it.

21 Q. Okay.

22 A. And I did what I could to keep my children in a house. So
23 I spent money the way I felt I needed to do to keep -- to keep
24 them alive.

25 Q. Was there ever a refusal to sign a loan mod?

1 A. From me? Oh, yeah.

2 Q. Why?

3 A. I wasn't going to pay 150 dollars a mortgage -- for
4 escrow, when I only paid 40.

5 Q. Were those issues brought forward to GMAC agents and
6 employees?

7 A. Repeatedly, by me and my wife.

8 Q. What was their response?

9 A. My response?

10 Q. What was their response?

11 A. I never got any real response from them about it. They
12 would transfer me from one person to another. I remember one
13 call in particular, a little off the subject -- it's still the
14 same subject but a little off. I was going to make a mortgage
15 payment. I couldn't tell you the date or anything I called.
16 And as soon as I called, they sent me to guy who says hi, I'm
17 Jonathan from loan counseling. I said wait a minute, I don't
18 want to talk to you, I want to make a payment. I couldn't make
19 a payment.

20 I had no choice in that. I called them, they transferred
21 me to another man, and I couldn't get away from him. And I
22 was -- I was livid, so I hung up and I -- yeah.

23 Q. Has this affected the value of the property?

24 A. Oh, indeed. Yeah.

25 Q. How?

1 A. The house is pretty much past the point that a few minor
2 repairs here and there on a regular basis are going to get it
3 back to shape. Now it's going to take major reconstruction,
4 plain and simple.

5 Q. There were pictures previously shown. Are they -- did
6 they pretty much represent how the house looks today?

7 A. It's an indication of what it's started to -- what it came
8 to look as, yes.

9 Q. Okay. And at this point, how has the actions of GMAC
10 affected your credit and your ability to do any of this?

11 A. Well, largely, when they wouldn't accept payments, as my
12 wife had said, my mortgage was always 657.25. And they
13 demanded 886.36, which is \$229.11 more. I don't know exactly
14 where they came up with that figure. I mean, but it doesn't
15 compute into what any numbers are from my escrow in any sort,
16 so I'm still lost there.

17 But because this was never resolved or never where we
18 could find an amicable solution to work through this, I've not
19 been able to fix the house. My credit's shot because they
20 would not let me make payments. And since I've lost my job due
21 to health reasons, and with my age, I'll not be able to -- I
22 don't know what I'm going to do. I mean, it's going to be a
23 tough road.

24 Q. Since you were not able to opt out based on what you were
25 told by, I believe Romeo, what are the consequences for you?

1 A. Well, I'm stuck with a mortgage payment -- or a mortgage,
2 rather, that started out at 70,000-some, and is now over
3 90,000. And most of the figures involved in that are
4 questionable.

5 THE COURT: May I ask you this? When's the last time
6 you made a mortgage payment?

7 THE WITNESS: My last mortgage payment was on --
8 actually there were two, but my last one before -- my second to
9 last was May 15th, 2011, and early the next morning I had a
10 heart attack. And that check was the last payment I had made
11 to them. And after the heart attack, I thought, it's not worth
12 it, and I quit paying.

13 THE COURT: How much did you pay on May 15, 2011?

14 THE WITNESS: I think it was 705.53 or thereabouts,
15 which I had been paying 705-something a month. But then
16 shortly after that, a week or so later, they wanted another
17 payment, and they talked me into it. So I jumped through that
18 other hoop, with the hopes that something good would come out
19 of it. I made another payment, and nothing good ever came out
20 of it.

21 THE COURT: You made a payment after May 15th, 2011?

22 THE WITNESS: I made one after May 15th. That was --
23 it may have been June or July. I really don't know when it
24 was. But they -- they talked me into making one more payment,
25 and I put out enough hope that maybe something would come from

1 it, but nothing did.

2 THE COURT: Okay, go ahead.

3 BY MR. MARGOLIS:

4 Q. The reason that the number of qualified written requests
5 were submitted regardless of whether they were in or out, was
6 because you were having these ongoing problems with GMAC?

7 A. Oh, correct. Nobody was answering any qualified written
8 requests, so we authorized you to help us get answers, and you
9 sent to any address you could to try to glean some information
10 and get some answers, and it never happened.

11 THE COURT: May I ask you this? Have you paid any
12 attorneys' fees to Mr. Margolis?

13 THE WITNESS: Pardon?

14 THE COURT: Have you paid any attorneys' fees?

15 THE WITNESS: Sure.

16 THE COURT: How much have you paid?

17 THE WITNESS: I don't know. I've paid 50 here, 100
18 here, 150 here. I mean, it's been several years. So I may
19 have paid 1,000, I may have paid more. I really don't know
20 what I've paid.

21 THE COURT: The reason I'm asking the question is, if
22 Mr. Futrell prevails on a RESPA claim, there is a provision in
23 the statute for attorneys' fees, and that's why I'm asking the
24 question. I haven't seen anything in any of the exhibits about
25 it, but -- go ahead, ask your next question.

1 Q. Okay. With regard to just your situation, you are on
2 short-term or long-term disability periodically, correct?

3 A. Yeah. I -- since 2008 till 2015, I had seven or eight
4 different operations.

5 Q. Okay.

6 THE COURT: Over what period? I'm sorry.

7 THE WITNESS: Over -- starting in 2008 I had a hernia
8 surgery, and I basically had a surgery a year through 2014.

9 Q. Okay. So if you would have been able to opt out of the
10 loan mod, would your disability, be it short- or long-term,
11 enabled you to have carried on without the loan mod?

12 A. Yeah, I could have probably -- probably made the 657, not
13 with the short-term, because when they set me up with that,
14 the -- my factory and their -- my factory was sold three times
15 in this process, and so I had different controlling entities
16 for the insurance. One out of Illinois put me on a short term,
17 took twenty-five percent of that right away. They taxed me
18 twenty-five percent. I didn't know this.

19 But anyway, with that, no, I couldn't have made it,
20 because I was bringing home 281 dollars a week and 81 of that
21 was going to insurance, so I was living on 200 a week when I
22 was on my short-term disability. Long-term disability, yeah, I
23 could have lived on that and paid 657.25 a month.

24 Q. You never got the option?

25 A. No. I mean, the whole point was, I was wanting to try to

1 make it better so I could better afford my home to give my
2 children a better life, and do things that needed to be done
3 and should be done. But I never paid less. I paid 657.25 a
4 month, and dealing with them and their modifications, always
5 made me pay more, always. I never gained. What the whole
6 point was, was to modify my loan.

7 I looked at this, okay, I've been paying on it for eleven
8 years. I figure, okay, I owe you nineteen years. Stretch that
9 out to thirty, bring my payment down, bring my interest rate
10 down, we're good to go. But I'm here because that didn't
11 happen. I'm here because they apparently thought they could
12 get more money out of me that I didn't have for whatever
13 reason, because they never showed me where my money's gone, so
14 I feel that for whatever reason they took my money; I don't
15 know. I don't see where it went.

16 And I think if they would have let me opt out and left me
17 alone and got rid of that nonsense, let me work the 657.25 a
18 month, I would have made it work one way or another.

19 Q. The Exhibit number 21, the November 17, 2011 -- where they
20 put 27,000 on the table just to wipe it?

21 A. Well, okay. December -- I got that November 17th it was
22 dated, and they needed to know back December 15th. So less
23 than a month later, they wanted to know, and that was in '11,
24 correct? January 3rd of 2012, I was due to have hand surgery.
25 I had that hand surgery. I the trapezium bone removed from my

1 right hand, because of my left thumb -- the bone was shot, and
2 they took the -- and so that one -- in March they did my left.

3 So when they offered to sell me the house for 27,000
4 dollars, me knowing I'm getting ready to have two surgeries,
5 there was nothing I could do to do that. So it was more to
6 me -- it seemed to me like a slap in the face, because I
7 couldn't do anything. I knew I was getting ready to go to
8 surgery. And going into surgery is not going to show them that
9 I can pay it back.

10 Q. Did you convey that to anyone at GMAC?

11 A. I don't know. I don't know if I did. I believe I did,
12 and I'm pretty sure my wife did. Oftentimes I was so mad at
13 them I just -- I let her deal with it. But I do know on the
14 top of every page, not all the correspondence from them, they
15 said there's a problem call us. We'll help. We'll work --
16 yeah, okay.

17 From my experience, I never got any help --

18 THE COURT: Mr. Margolis, I'm going to give you
19 another eight minutes. We're recessing at 12:30. You're going
20 to finish with your --

21 MR. MARGOLIS: If it --

22 THE COURT: -- you're going to finish with your
23 examination, and Mr. Wishnew is going to resume after lunch
24 with his cross-examination.

25 MR. MARGOLIS: If it please the Court, I'm done.

1 THE COURT: Okay. All right.

2 Do you want to start your cross-examination, Mr.
3 Wishnew?

4 MR. WISHNEW: I do. I don't -- I'm going to do my
5 best to finish in eight minutes, Your Honor.

6 THE COURT: Go ahead. I'll give you ten.

7 MR. WISHNEW: I appreciate that, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. WISHNEW:

10 Q. Good afternoon, Mr. Futrell.

11 A. Good afternoon.

12 Q. Mr. Futrell, if I could ask you, there's two binders
13 before you. I think you have the hard copy open. I'd like you
14 to ask you to turn to Exhibit J?

15 A. Well, I am at Exhibit J.

16 Q. Okay. And you testified just a few minutes ago that you
17 were paying 705.53 on a monthly basis, correct?

18 A. Something like that. That --

19 Q. Okay.

20 A. -- the last payments I was making.

21 Q. In the middle of the first page, is the total payment --
22 the total payment says 705.53, correct?

23 A. I think -- yeah, that looks correct as to what I had been
24 paying there at the end. And like I mentioned, they said 48
25 was going to be the escrow, and 8-something was --

1 Q. Sure.

2 A. -- for a shortage that didn't exist --

3 Q. Sure.

4 A. -- but I didn't fight it. I wanted to pay so I didn't
5 lose my house.

6 Q. Right.

7 A. And the other 40 was for my escrow.

8 Q. Okay. And the top of the page under your name it says
9 "Congratulations, your request for a loan modification has been
10 approved," correct?

11 A. I've seen -- yes, but I've seen many.

12 Q. Okay. The last page of that document --

13 A. Um-hum.

14 Q. -- is that your signature?

15 A. Well, it does look like it.

16 Q. Okay, that's it.

17 A. But under my capital F for my name, it looks as though
18 somebody had drawn a "2" and I -- I would -- I don't know that
19 I did -- I'm just saying, I don't know that I signed over that.

20 Q. But you said --

21 THE COURT: I resolved this issue to my satisfaction.

22 MR. WISHNEW: Okay, Your Honor.

23 THE COURT: Ask your next question.

24 MR. WISHNEW: I apologize.

25 Q. You mentioned that you had multiple operations during the

1 period 2008 to 2011?

2 A. 2008 to 2014.

3 Q. Okay. You also mentioned that your company was going
4 through corporate turnovers?

5 A. Well, the -- yeah, the company I worked for had been owned
6 by the same man in Ohio for over thirty years.

7 Q. Right.

8 A. He sold it, and we didn't know.

9 Q. And when did he sell it?

10 A. It would have probably been 2011, and the company he --

11 Q. That was stressful?

12 A. No, not really, because the company that bought us out, I
13 was one of the guys being in maintenance, I'd go up there and
14 start tearing presses down, I spent a couple days up in
15 Michigan City up north --

16 Q. But you said you --

17 A. -- get to tear presses down and get paid for it.

18 Q. -- you said you -- I apologize, I talked over you.

19 A. Pardon.

20 Q. I said I apologize --

21 THE COURT: He interrupted, and he apologized for
22 interrupting you.

23 THE WITNESS: Okay. I don't hear well. I worked
24 steel fabrication many years of my life --

25 THE COURT: Well, let's just get back to the

1 questions --

2 THE WITNESS: -- with air blowing, and I don't hear
3 well.

4 THE COURT: -- and answers. Go ahead. As your
5 question again.

6 A. But no, that didn't stress me, no. I didn't lose
7 anything. I did get the opportunity to go up northern part of
8 the state and tear presses apart.

9 Q. Right.

10 A. And get paid for it. And get -- you know, so it wasn't a
11 bad deal.

12 Q. But did you also testify you were bringing home less
13 money?

14 A. I still brought home the same amount of money per hour on
15 an hourly wage.

16 Q. Right. But were you working less hours?

17 A. I -- yeah, I didn't get as many -- much overtime.

18 Q. Okay. So between medical procedures, being the lead
19 maintenance man at a company experiencing a turnover, working
20 less hours, could potentially create some stress, correct?

21 A. I didn't -- well, actually, I had my hernia in '08. Had
22 my heart attack in '11. Had both my thumbs done in 2012. I
23 was off work so much, there was stress. But I was on so many
24 narcotics for over a year, I didn't really feel the stress that
25 I would have had otherwise.

1 Q. Okay. Would you agree with me that not making a payment
2 under a contractual obligation such as a note or a mortgage is
3 going to hurt your credit?

4 A. Well, yes.

5 Q. Okay. And you said that the last payment you made to GMAC
6 Mortgage was on or about May 15th, 2011?

7 A. That, and then I made one more after that, yes.

8 Q. Okay.

9 MR. WISHNEW: Your Honor, that's all the questions I
10 have for Mr. Futrell.

11 THE COURT: All right. Mr. Margolis?

12 MR. MARGOLIS: Just one.

13 REDIRECT EXAMINATION

14 BY MR. MARGOLIS:

15 Q. There was the -- there was the point with regard to you
16 and your actions with regards to --

17 MR. MARGOLIS: Strike that.

18 Q. Okay. The question -- okay, when GMAC did not respond to
19 the October 30th, 2009 qualified written request, and reported
20 you to the creditor reporting agencies, I believe, since '09
21 you missed eleven payments, was that a problem for you?

22 A. Yeah, it still is.

23 Q. And that was in the content of the USDA letter?

24 A. I believe so, yes.

25 MR. MARGOLIS: Thank you. Nothing else.

1 THE COURT: All right. We're going to take a recess
2 until 2:15. Here is my operative plan. Actually you only have
3 one witness. You have no other witnesses, correct?

4 MR. MARGOLIS: I'm done.

5 THE COURT: All right. So we'll start with Ms.
6 Lathrop when you come back. I think, one way or another, we're
7 going to be done today. If necessary, we're going to go this
8 evening. You both want to have your people go home. I hope
9 that won't be necessary; I hope we'll get done.

10 MR. WISHNEW: I would suspect my examination of Ms.
11 Lathrop should take approximately forty-five minutes, Your
12 Honor.

13 THE COURT: Okay. Well, you have the written direct.

14 MR. WISHNEW: I do, but I want to bring out --

15 THE COURT: Okay. All right. But I want to see Mr.
16 Wishnew and Mr. Margolis very briefly in chambers, okay?

17 And so you're excused. You're --

18 THE WITNESS: Thanks.

19 THE COURT: Okay? You'll knock on the first door.
20 I'm going to let you in.

21 (Recess from 12:29 p.m. until 2:20 p.m.)

22 THE COURT: All right. Please be seated. We're back
23 on the record in Residential Capital 12-12020.

24 Mr. Wishnew?

25 MR. WISHNEW: Thank you, Your Honor. Jordan Wishnew,

1 Morrison & Foerster, for the ResCap Borrower Claims Trust. The
2 Trust would like to call Ms. Sara Lathrop to the stand.

3 THE COURT: Okay. Ms. Lathrop, come on up.

4 MR. WISHNEW: Your Honor, if I could approach? Ms.
5 Lathrop's declaration wasn't in the binder because I think it
6 was filed after the binder got submitted, so --

7 THE COURT: Okay. Thank you.

8 MR. WISHNEW: Exhibit EE.

9 THE COURT: EE?

10 All right. If you'd raise your right hand and be
11 sworn, Ms. Lathrop?

12 Thank you.

13 (Witness sworn)

14 THE COURT: All right. Please have a seat.

15 DIRECT EXAMINATION

16 BY MR. WISHNEW:

17 Q. Good afternoon, Ms. Lathrop.

18 A. Hello.

19 Q. We're here today in connection with the ResCap Borrower
20 Claims Trust objection to claim 725 by William Futrell against
21 GMAC Mortgage. I'd like to ask you some questions concerning
22 GMAC Mortgage's records regarding Mr. Futrell's loan.

23 THE COURT: Let me ask you first; are you offering the
24 Exhibit EE?

25 MR. WISHNEW: We are offering Exhibit EE into

1 evidence, Your Honor.

2 THE COURT: All right. Any objection?

3 MR. MARGOLIS: No.

4 THE COURT: All right. Exhibit EE is in evidence.

5 (Ms. Lathrop's declaration was hereby received into evidence as
6 Debtors' Exhibit EE, as of this date.)

7 MR. WISHNEW: Okay.

8 THE COURT: All right. Go ahead.

9 MR. WISHNEW: And with that, I will skip ahead, Your
10 Honor.

11 Q. So Ms. Lathrop, are you familiar with the Futrell loan?

12 A. Yes, I am.

13 Q. Okay. And are you aware that Mr. Futrell filed a proof of
14 claim against GMAC Mortgage in the Chapter 11 case?

15 A. Yes, I am.

16 Q. Okay. And that the Borrower Claims Trust filed an
17 objection to that proof of claim?

18 A. Yes.

19 Q. Okay. And are you generally familiar with that Borrower
20 Claims Trust objection?

21 A. Yes, I am.

22 Q. Okay. If I could ask you to look at Exhibit D in the hard
23 binder before you.

24 THE COURT: Before you proceed, I just want to see
25 where we are on exhibits. I had suggested to both sides this

1 morning -- they simply agreed -- that all the exhibits could be
2 admitted into evidence and be given such weight as the Court
3 deems appropriate. But I never really had a response from
4 either side with respect to that.

5 MR. WISHNEW: Look, as I noted this morning, Your
6 Honor, we have relevance concerns, but to the extent Your Honor
7 is going to give them whatever weight he finds appropriate, I
8 think it gets to the same point. So we're okay stipulating to
9 the evidence coming in.

10 THE COURT: Okay. Counsel?

11 MR. MARGOLIS: The same.

12 THE COURT: All right. So we can short circuit that;
13 all exhibits that have been premarked and are in the binders
14 are admitted into evidence.

15 (All premarked exhibits were hereby received into evidence, as
16 of this date.)

17 THE COURT: I recognize that there are relevance
18 objections. I think I had entered an order before the trial
19 that addressed some of that in the courtroom, giving them such
20 weight as I deem appropriate.

21 Go ahead, Mr. Wishnew.

22 MR. WISHNEW: Thank you, Your Honor.

23 BY MR. WISHNEW:

24 Q. All right. Prior to GMAC Mortgage transferring servicing
25 of this loan to Ocwen, was this document the servicing note

1 that is maintained in the business records for Homecomings and
2 GMAC Mortgage?

3 A. Yes.

4 Q. Okay. And were there certain systems in which it was
5 located?

6 A. It was located within our LoanServ, also known as our
7 Fiserv system. And we're also able to access them through our
8 business objects program.

9 Q. Okay. And what sorts of information were included in the
10 servicing notes?

11 A. The servicing notes themselves would have included
12 conversations between the GMAC or Homecomings and any debtor so
13 for the call -- not debtor; excuse me -- borrower, or anyone
14 who called in regarding the account, correspondence to or from
15 the borrower, as well as internal interactions.

16 Q. And when would GMAC Mortgage employees typically enter
17 such information into the servicing notes?

18 A. It would usually be entered the same day or within
19 twenty-four hours. There would be sometimes a delay due to a
20 weekend.

21 Q. Right.

22 A. So if it happened end of day Friday, it may not be updated
23 till the following Monday or business day.

24 Q. Okay. And if a letter was sent to a borrower, how was
25 that recorded?

1 A. It would be recorded in the same accordance, the same day
2 or the next business day, with just a generic explanation of
3 what the letter was.

4 Q. And would the same methodology be used if a letter was
5 received from the borrower?

6 A. Yes.

7 Q. If a Homecomings or a GMAC Mortgage representative called
8 the borrower, how was that recorded -- or I'm sorry, was that
9 recorded?

10 A. Yes, it would be recorded.

11 Q. And how would it be recorded?

12 A. It would have been recorded -- if an actual conversation
13 took place, it would have been recorded with a summary of the
14 call.

15 Q. Um-hum.

16 A. If no phone call interaction took place, say a message was
17 left or there was no answer, it would usually just record as
18 zeros.

19 Q. Okay. And so would the same methodology go if the
20 borrower called into GMAC Mortgage or Homecomings?

21 A. Yep. There would have been a summary of the conversation.

22 Q. Okay. And if a payment on account of a loan was received
23 by GMAC Mortgage or Homecomings, how was that -- was that
24 recorded?

25 A. Yes, it would have been recorded in the payment history.

1 Q. And the payment history is a part of the loan servicing
2 notes?

3 A. Yes.

4 Q. Okay.

5 A. That's a part of the exhibit we have.

6 Q. Okay. Did Homecomings receive a loss mitigation or
7 financial workout package from Mr. Futrell in 2009?

8 A. Yes.

9 Q. Okay. Do you recall what month it was?

10 A. I believe it was June 2009.

11 Q. Okay. And what did Homecomings do after it received that
12 package?

13 A. They began reviewing the workout package that was
14 received, as far as what information and what documents were
15 available inside it to see if it was complete.

16 Q. Okay. And prior to the time Mr. Futrell was approved for
17 June 2009 trial modification, did his loan account have an
18 escrow account -- an escrow associated with it?

19 A. No, there was no escrow prior to the loan mod request.

20 Q. Did Homecomings or GMAC Mortgage at some point create an
21 escrow associated with the loan?

22 A. Yes, there was a escrow analysis completed on June 17,
23 2009, due to the request for a loan mod received.

24 Q. Okay. And that was in connection with the HAMP trial loan
25 modification?

1 A. Yes, it was -- it was because of it being received in, we
2 had to have a escrow account in accordance with HAMP
3 guidelines.

4 Q. Got it. Okay.

5 A. Go ahead.

6 Q. And you mentioned that an escrow analysis was done on this
7 account?

8 A. Yes.

9 Q. Okay. And is that escrow analysis referenced in the
10 servicing notes, Exhibit D?

11 A. It should be. I can flip to a page to show you.

12 Q. If I could reference page 120 of 162 within Exhibit D. Do
13 you see the reference there?

14 A. Yes, I show, "The online escrow analysis sent to print
15 vendor note on June 17th", on that page; it's about ten lines
16 down from the top.

17 Q. And that was by -- the transaction user name was Camille
18 Weiland, W-E-I-L-A-N-D?

19 A. Yes.

20 Q. Thank you. And while preparing for today's hearing, did
21 you check whether the analysis that was done on June 17th was
22 accurate?

23 A. Yes, I -- I checked.

24 Q. And was that analysis accurate?

25 A. No, it was not correct.

1 Q. What was wrong with it?

2 A. The amount used for fire insurance was wrong.

3 Q. Okay. And I think, as we've discussed earlier this
4 morning, there was an extra thousand dollars placed on it, so
5 the cost of 352.53 was -- am I correct that it was 1,352.53?

6 A. It was approximately 1,000.

7 Q. Okay. Did Mr. Futrell make all three payments required of
8 the June 2009 trial plan?

9 A. Yes.

10 Q. Was he --

11 A. There --

12 Q. Was he thereafter offered a permanent loan modification?

13 A. Yes.

14 Q. Okay. If I could ask you to turn to Exhibit E. Do you
15 recognize this document?

16 A. Yes.

17 Q. And what is this document?

18 A. This is the HAMP permanent loan modification offered on
19 October 14th, 2009.

20 Q. All right. And was this sent to Mr. Futrell?

21 A. Yes, the address is on the top.

22 Q. Okay. What were the terms of the permanent loan
23 modification offered in the letter?

24 A. According to Section 3 of the permanent loan modification,
25 it lists the terms. It shows that the maturity date remained

1 the same at March 1st, 2031.

2 Q. Um-hum.

3 A. The interest rate was reduced to 7.75 percent, starting
4 with the November 1st, 2009 payment. And this -- and this
5 reduced the monthly principal balance.

6 Q. Okay.

7 THE COURT: Which exhibit is this?

8 MR. WISHNEW: This is Exhibit --

9 THE WITNESS: Exhibit E.

10 MR. WISHNEW: -- E.

11 THE COURT: Where does it set forth the amounts?

12 THE WITNESS: It's listed under section 3(c). It's
13 the back of the second page.

14 THE COURT: I have a blank back of the second page.

15 THE WITNESS: Oh.

16 MR. WISHNEW: Let me give you my copy, Your Honor.

17 THE COURT: This is not even the same document. It's
18 not the same document.

19 Okay. I've been handed what's been marked as Exhibit
20 E. This may be not --

21 MR. WISHNEW: It's it a different volume, Your Honor.

22 THE COURT: Yeah, it is. Let me hand it back to you.

23 I apologize. I'm looking in the wrong -- I'm looking at
24 Exhibit E but in the wrong binder. Sorry for my confusion.

25 Okay. Just orient me again where the page --

1 MR. WISHNEW: It's the fourth page of that exhibit,
2 Your Honor. There's a chart laying out the --

3 THE WITNESS: It's section 3(c).

4 THE COURT: Okay. I'm there. Thank you.

5 MR. WISHNEW: Okay.

6 BY MR. WISHNEW:

7 Q. Ms. Lathrop, did the monthly payment amount reflect the
8 mistaken June 17, 2009 escrow analysis insurance payment of
9 approximately 1,350 dollars?

10 A. Yes, it lists the total escrow payment as \$150.66, and
11 that was incorrect.

12 Q. Okay. And did Mr. Futrell execute and return the
13 permanent loan modification?

14 A. No.

15 Q. Okay. If Mr. Futrell had executed the permanent loan
16 modification, would he have been responsible for the inflated
17 monthly escrow portion of the payment amount?

18 A. No.

19 THE COURT: Does it say that somewhere?

20 THE WITNESS: I'll be honest; I don't bel --

21 THE COURT: I don't see that.

22 THE WITNESS: I don't believe it says that, no.

23 THE COURT: So how was he supposed to know he wasn't
24 going to be responsible for the amount that you set forth --
25 you didn't do it; I understand that.

1 THE WITNESS: I know what you mean.

2 THE COURT: In my question was an inadvertent error,
3 but he gets the document, a modification agreement, and it
4 includes an amount of monthly payment -- monthly escrow payment
5 amount, and it doesn't say anything about, well, this number is
6 wrong; you're not obligated to do it. So on what basis do you
7 say he would -- if they signed this agreement, this isn't what
8 they were obligated to pay?

9 THE WITNESS: Just from my prior business knowledge
10 and business practice, because I worked in, actually, a
11 department related to this, a new escrow analysis would have
12 been completed at the execution.

13 THE COURT: How is a borrower supposed to know that?
14 If they read this document --

15 THE WITNESS: I agree.

16 THE COURT: -- and it says this is how much you're
17 supposed to pay; sign it; they wouldn't know that, would they?

18 THE WITNESS: Correct.

19 THE COURT: Go ahead, Mr. Wishnew.

20 MR. WISHNEW: Okay.

21 BY MR. WISHNEW:

22 Q. I'd like to go through some of the servicing notes from
23 December 2009 to January 2010. Did GMAC Mortgage receive
24 written inquiries from Mr. Futrell and his counsel, during the
25 period of October 2009 and January 2010, concerning the

1 mistaken escrow calculation?

2 A. I believe so.

3 Q. Okay. And do the servicing notes reflect receipt of Mr.
4 Margolis' October 30th, 2009 inquiry which we've referred to
5 today as the QWR?

6 A. Hold on one second. There's nothing specifically on
7 October 30th.

8 Q. Correct.

9 A. There is a note on November 2nd, 2009 that shows that
10 there was a fax received, qualified written request. And
11 that's on page 113 of 162 of the servicing notes --

12 A. Okay.

13 Q. -- about five lines down from the top.

14 Q. Okay. And in preparing for your testimony today, did you
15 happen to check what day of the week November 2nd was?

16 A. November 2nd was a Monday.

17 Q. Okay. And so --

18 THE COURT: I'm sorry; it was what?

19 THE WITNESS: It was a Monday; it was the beginning of
20 the week.

21 Q. And so October 30th then would have been Friday?

22 A. Correct.

23 Q. And so consistent with your earlier testimony, based on
24 these servicing notes, it's possible that GMAC Mortgage
25 received an inquiry on Friday December (sic) 30th, but it was

1 marked in the servicing notes as November 2nd?

2 A. Yes.

3 Q. All right. And to the best of your knowledge, did GMAC
4 Mortgage send Mr. Futrell's counsel correspondence in November
5 of 2009?

6 A. Yes, I believe there was correspondence sent on November
7 13th.

8 Q. Okay. And is that reflected in the servicing notes?

9 A. Yes, they're on page 112.

10 Q. Okay.

11 A. It shows --

12 THE COURT: May I ask you; before you turn the page,
13 at page 113 --

14 THE WITNESS: Yes, sir.

15 THE COURT: -- the entry "escrow account disclosure
16 statement forwarded to"; who is that forwarded to?

17 THE WITNESS: I believe it says -- you're looking at
18 the top -- the most top entry from November 2nd?

19 THE COURT: No.

20 THE WITNESS: No?

21 MR. WISHNEW: There's --

22 THE COURT: I see several of those entries.

23 MR. WISHNEW: There's two entries, Your Honor.

24 THE COURT: I'm looking at the one -- yeah, so how
25 come there are two entries for it?

1 THE WITNESS: Reading through it, it says -- the first
2 entry that's listed, which is the one that's actually lower,
3 says that the fax was received. And then right above it, it
4 says, "Please ignore the previous LMT note". If we look off to
5 the left-hand side, they're labelled as LMT. And then if we
6 look at the one above it, it shows that they corrected an
7 e-mail address.

8 THE COURT: Okay.

9 THE WITNESS: So it appears that that's why there's
10 two of almost an identical note there.

11 THE COURT: Who was it forwarded to?

12 THE WITNESS: Initially it looks like they imaged it
13 as a workout, and then they corrected it and imaged it as new
14 correspondence, which is what the "corr" stands for.

15 BY MR. WISHNEW:

16 Q. And Ms. Lathrop, just to follow up on Judge Glenn's
17 question, looking seven lines from the top, it says -- and then
18 continuing on to the eighth line, it says "over to loss mit
19 correspondence", is that correct?

20 A. Yes.

21 Q. Okay. So when the Court asked who it was forwarded to, as
22 far as a loss mit correspondence?

23 A. Yes, sir.

24 Q. Okay. And that's what the image -- where it says imaged
25 as "corr.gleel@2863", that all relates to loss mit

1 correspondence?

2 A. I would assume yes; I don't know those e-mails by heart.

3 THE COURT: What is an escrow account disclosure
4 statement?

5 THE WITNESS: I'll be honest; I -- I can't answer
6 fully what all would have been in that.

7 THE COURT: Okay.

8 THE WITNESS: But as far as -- it would have just been
9 explaining an escrow account, to my knowledge.

10 THE COURT: I don't know why the disclosure statement
11 is at that point.

12 THE WITNESS: I -- I agree.

13 THE COURT: Go ahead, Mr. Wishnew.

14 MR. WISHNEW: Thank you.

15 Q. Ms. Lathrop, can you briefly take me through the servicing
16 notes concerning the preparation and delivery of the November
17 13th response to the October 30th QWR?

18 A. Sure. Would you like me to just start from November 2nd
19 or --

20 Q. If you could just briefly summarize what Ms. Alejandra
21 Diaz is saying on 112 of 162.

22 A. The first note from Alejandra Diaz is dated November 11th,
23 2009. It's approximately five, six lines from the bottom. It
24 just states, "E-mailed loss mit for assistance. Waiting in
25 response to finish letter". I assume that they were looking

1 for an update to be able to finish the request. Then above
2 that, on the -- excuse me; let me make sure I understand what
3 I'm reading. Above that, on November 11th, from Denise
4 Walgreen (ph.), on the same date, it states, "Duplicate
5 request; gave correspondence to A. Diaz. She will respond once
6 she hears back from loss mit". So they're just once again
7 reiterating waiting on that information to come in from the
8 other department. It looks like the next real entry is from
9 November 13th, 2009, and this is related to a QWR request.

10 THE COURT: What's the entry on November 11th? "Tsk
11 type 241 QWR request"?

12 THE WITNESS: It looks like it's just related to the
13 closing of the CIT 241, which would have been a work order that
14 was used to interact between departments. Because if we look
15 directly below that Tsk, it shows the 016 closing CIT 241, and
16 it looks like the task type 241 above is just explaining what
17 that task was that was being closed out.

18 THE COURT: What was being closed out?

19 THE WITNESS: The -- the work order that had been
20 opened.

21 THE COURT: What do you mean a "work order"?

22 THE WITNESS: I'm trying to think of the best way to
23 explain. In order to try and clearly communicate between
24 different departments, the CITs, also known as work orders,
25 would be opened, in order to track and log them to make sure

1 they were worked. So this one is labelled as a 241, but the
2 016 next to it is the very beginning of the entry. So we can
3 track when it was initially opened, which was on November 5th,
4 2009, so like the top of the prior page, on page 113. It was
5 opened on that date, and then the task type that we see being
6 closed out on the 11th is showing that specific work order
7 being closed out after they had fulfilled whatever task needed
8 to be done related to it.

9 THE COURT: Go ahead, Mr. Wishnew.

10 MR. WISHNEW: Thank you.

11 BY MR. WISHNEW:

12 Q. Ms. Lathrop, if I could ask you to take a look at what's
13 been marked as Exhibit S, as in Sam. Have you seen this letter
14 before today?

15 A. Yes.

16 Q. Okay. And what is this letter?

17 A. This is a letter from GMAC Mortgage to Thomas D. Margolis.

18 Q. Okay. And let me ask; is it possible -- sorry. Do the
19 servicing notes reflect receipt of an October 23rd, 2009 letter
20 on November 2nd?

21 A. I'd have to look at the servicing notes again.

22 Q. Okay. It's page 113.

23 A. I don't show a specific letter date. Give me a moment to
24 make sure I am not missing it. I don't see anything on that
25 page that specifically references that, no.

1 Q. Okay. And what we said before it's possible that an
2 inquiry that was received on October 30th, which is a Friday,
3 would be logged on Monday, November 2nd, correct?

4 A. Yes, that -- that would be in accordance with how
5 documents would come in.

6 Q. Okay. So a copy of an inquiry from Mr. Margolis dated
7 October 30th could very well be the inquiry dated November 2nd
8 in the notes?

9 A. Yes, that's possible.

10 THE COURT: What's the transaction type "Nt"?

11 THE WITNESS: "Nt"? Note. It would have just been a
12 shorthand for the word note.

13 THE COURT: Okay.

14 Q. Is it possible that GMAC Mortgage's November 13th letter
15 responded to the October 30th inquiry from Mr. Margolis, but
16 due to a scrivener's error, the letter indicated that an
17 October 23rd letter was received on November 2nd?

18 THE COURT: Anything's possible, Mr. Wishnew. Come
19 on. The letter says it responds to the October 23rd letter.
20 The entry on page 112 says, "This is in response to QWR dated
21 10/23/09 enclosed."

22 MR. WISHNEW: I'll move on, Your Honor.

23 Q. Ms. Lathrop, can you direct your attention, in the
24 servicing notes, to December 3rd, 2009? So it's on page 108 of
25 the servicing notes.

1 A. Okay.

2 Q. And specifically, an entry by Wendy Chapman (ph.).

3 A. Yes.

4 Q. Okay. And can you please briefly summarize what that
5 entry reflects?

6 A. The entry specifically says, "Closing CAT 130. Unable to
7 process analysis. Loan is in loss mit with loan mod pending"
8 and "Sent letter."

9 Q. Okay.

10 A. And the letter's identified as 2:02.

11 Q. And when Ms. Chapman says "unable to process analysis", is
12 she referring to -- what type of analysis is she referring to?

13 A. Based on the task type above that states "manual escrow"
14 above it, I would assume it's the escrow analysis, if that's
15 what the workout is.

16 Q. If I could ask you to turn to Exhibit U, as in umbrella?
17 Is this letter -- is the content of this letter consistent with
18 the servicing note entry we just discussed?

19 A. Yes, I believe it is.

20 Q. Okay. If I could ask you to direct your attention to the
21 servicing notes by Ms. Elizabeth Milare, M-I-L-A-R-E, on
22 December 9th, 2009, page 107 of the notes.

23 A. Okay.

24 Q. Okay. What does this entry reflect?

25 A. The one on December 9th reflects a conversation between

1 Elizabeth and Mrs. Futrell.

2 Q. Okay. And during that conversation, did Ms. Futrell
3 request an escrow analysis be conducted?

4 A. It would appear so from the summary.

5 Q. Okay. And what was she told by GMAC Mortgage? That is,
6 what was Ms. Futrell informed by GMAC Mortgage?

7 A. According to the shorthand here, it says, "Advice cannot
8 be processed because account is under loss mit department. The
9 system already shows an insurance payment of 352.37, but cannot
10 process the escrow analysis due to status of the loan. And the
11 account is being reviewed for loan mod."

12 Q. So internally, the insurance amount was corrected to
13 352.37, but it couldn't actually be effectuated because the
14 loan was still in a loan mod process?

15 A. That -- that's what this says.

16 Q. Okay. If I could direct your attention to the notes by
17 Candice Buchanan on January 8th, 2010, pages 104 to 105 of the
18 servicing notes.

19 A. Okay.

20 Q. And what does this entry reflect?

21 A. This reflects a conversation, also, between GMAC Mortgage,
22 and it says with -- "authorized by the borrower"; I assume it's
23 Mrs. Futrell.

24 Q. Um-hum.

25 A. The notes specifically state, "Advise the final escrow

1 analysis cannot be done on account until the permanent mod has
2 been applied and updated, which would require the docs being
3 signed and sent back, but refused to sign docs before placed
4 insurance on her account is not going to pay".

5 Q. And is this -- if I could direct your attention to the
6 servicing notes by Luke Reingart (ph.) on January 12th, 2010.
7 Does that reflect a similar type of conversation with Ms.
8 Futrell and a similar message being delivered by GMAC Mortgage?

9 A. On page 104?

10 Q. Yes, please.

11 A. It looks like it was a letter that was mailed to the
12 attorney advising "no escrow analysis can be done because the
13 loan mod is pending. If they do not agree with the option,
14 then they can refuse and reapply. And they were advised that
15 they could call loss mit for potential options but there may be
16 no further options available."

17 THE COURT: Ms. Lathrop, was it GMAC's policy, that if
18 they made a mistake in the escrow analysis, that it couldn't be
19 corrected until the borrower signed an incorrect document?
20 That's what you're say -- that's basically what you're
21 telling -- you're reading these notes --

22 THE WITNESS: Yeah.

23 THE COURT: -- as saying it doesn't matter whether we,
24 GMAC, have made a mistake; we can't fix it. Was that the
25 policy?

1 THE WITNESS: I don't want to say that it's the
2 policy, but it was a system limitation. When we would --

3 THE COURT: Really? Is that an exception to RESPA?

4 THE WITNESS: I personally don't know RESPA, so I
5 can't answer that. But I can tell you, from working with the
6 loans and the LoanServ system that we use, it would essentially
7 lock those numbers in, and then that's why a final escrow
8 analysis would have to be done at the end, to make sure that
9 the correct projected numbers were used.

10 THE COURT: So you're telling me that GMAC built a
11 system that wouldn't allow for a correction of an error that
12 GMAC made? That's what you're telling me?

13 THE WITNESS: While in process, yes. Though it would
14 allow them to correct it before anything was finite or final.

15 THE COURT: Really? You asked -- not you personally;
16 I understand that. GMAC asked the Futrells to sign a document
17 that said that they would pay 154 dollars in escrow value.
18 That, you acknowledge, was incorrect.

19 THE WITNESS: Yes.

20 THE COURT: And where that resulted from an error, not
21 because taxes may have changed --

22 THE WITNESS: Correct.

23 THE COURT: -- or insurance premiums changed, it
24 couldn't be fixed unless they signed and agreed to pay the
25 incorrect amount.

1 THE WITNESS: It -- while the loan modification was in
2 process, yes. And I -- I totally agree that the system
3 limitations were not great, but at least there was that
4 failsafe --

5 THE COURT: Are the borrowers supposed to suffer
6 because GMAC built a system that wasn't great?

7 THE WITNESS: I don't know if the bor -- in the --

8 THE COURT: I'm not fault -- I want to make clear I'm
9 not faulting you.

10 THE WITNESS: Oh, no; I totally -- I understand. I
11 totally understand the question. I worked in -- I worked in
12 the default department for five and a half years. Trust me; I
13 totally understand the question. But to me that's why, while
14 the numbers were wrong, and I totally admit to that those
15 numbers are wrong, there was the effort to make sure that
16 before a penny came in with the permanent modification, that a
17 new escrow was completed to make sure that the valid numbers
18 were used. And the permanent mod that was offered was meant to
19 only adjust the actual principal and interest because --

20 THE COURT: Does it say that?

21 THE WITNESS: -- that's all that it --

22 THE COURT: Does it say that?

23 THE WITNESS: It only changes the terms of the
24 original mortgage.

25 THE COURT: No, it also -- the original --

1 THE WITNESS: It adds an escrow.

2 THE COURT: The original mortgage had no escrow at
3 all; you've acknowledged that.

4 THE WITNESS: Correct.

5 THE COURT: The testimony has established that; it had
6 no escrow at all. So the escrow was being established with the
7 loan modification.

8 THE WITNESS: Yes.

9 THE COURT: The permanent modification offer
10 specifically had language about 150 dollars a month that they
11 were supposed to pay in escrow, which is acknowledged to be
12 incorrect. Okay.

13 THE WITNESS: Yes.

14 THE COURT: So you understand my frustration?

15 THE WITNESS: I totally understand.

16 THE COURT: Go ahead, Mr. Wishnew.

17 MR. WISHNEW: Sure.

18 BY MR. WISHNEW:

19 Q. Ms. Lathrop, was the borrower's only choice to sign the
20 permanent modification, or could they have said to GMAC
21 Mortgage, please cancel the modification, in which case it
22 would -- the process would restart and the escrow analysis
23 would be redone?

24 A. I don't know if I understand what you mean by "restart".

25 Q. So would a new -- if the loan modification process, if

1 they said we're not signing the permanent modification --

2 A. Okay.

3 Q. -- at that point in time, was GMAC Mortgage able to
4 undertake a new estimated escrow analysis?

5 A. If they had requested for the loan mod process to just
6 stop --

7 Q. Yes.

8 A. -- we don't want it; close it out --

9 Q. Right.

10 A. -- there could have been two different outcomes from that.
11 They could have chosen to keep the escrow account on the
12 loan --

13 Q. Um-hum.

14 A. -- and at that point a new escrow analysis could have been
15 completed.

16 Q. Right.

17 A. Or the escrow would have been completely wiped, as it was
18 only added as a part of the HAMP requirements for the
19 modification.

20 Q. Okay.

21 A. That was common practice.

22 Q. Okay. So am I correct that Mr. Futrell was denied a
23 permanent loan modification after he failed to return the
24 executed agreement?

25 A. Related to the one that was offered in October?

1 Q. Correct, yes.

2 A. I believe on January 29th, 2010, it was officially denied.

3 Q. Okay. And is that reflected in the servicing notes?

4 A. Yes. Give me one second to give you a location. It would
5 have been on page 102 of 162, probably about ten lines down
6 from the page, on January 29th, 2010.

7 Q. Okay.

8 A. It shows "denial letter due to the permanent mod docs not
9 being returned".

10 Q. After Mr. Futrell was denied permanent loan modification
11 on January 29th, was the mistaken escrow calculation contained
12 in the June 17th, 2009 escrow analysis corrected?

13 A. Yes.

14 Q. And when was that?

15 A. On February 3rd, 2010.

16 Q. If I could ask you to turn to Exhibit K, as in kite? Do
17 you recognize this document?

18 A. This is an escrow analysis.

19 Q. Okay. And this is -- the analysis date is February 3rd,
20 2010, correct?

21 A. Yes.

22 Q. Okay.

23 A. This is what would have been sent to the borrower.

24 Q. Okay. And how was the escrow analysis corrected?

25 A. According to this escrow analysis, it shows that the only

1 disbursement that had been made, or that was set to come off,
2 was for taxes. And then it broke out the next twelve-month
3 period of what they projected to be paid out.

4 Q. Okay. Was this escrow analysis sent to Mr. Futrell?

5 A. Yes, it has his address on it, and this was something that
6 was usually sent out at the time that it was generated.

7 Q. Okay. And is the delivery of this reflected in the
8 servicing notes?

9 A. I'll have to check those.

10 Q. Okay.

11 A. On page 101 of the servicing notes --

12 Q. Um-hum.

13 A. -- dated February 3rd, 2010, it's maybe the fourth line
14 from the top, it shows it was sent to be printed with our
15 vendor so it could go out.

16 Q. Okay. After denial of the permanent loan modification in
17 late January, did Mr. Futrell seek approval for a new loan
18 modification?

19 A. I believe there was a new one received in the month of
20 February, but I'd have to look through to find the specific
21 date.

22 Q. Okay.

23 A. It looks like the voice of the department received a new
24 workout package on February 12th, 2010. It's on page 100 of
25 the servicing notes, middle of the page.

1 Q. Okay. Did GMAC Mortgage conduct a review to determine Mr.
2 Futrell's eligibility for a HAMP trial loan modification?

3 A. They reviewed him for it, but they determined he did not
4 qualify for a new HAMP.

5 Q. Okay. And that's reflected in the servicing notes as
6 well?

7 A. Yes. Give me a second to give you the specific location.
8 It's page 99 --

9 Q. Um-hum.

10 A. -- dated February 16th, 2010, Amber Shue (ph.).

11 Q. Um-hum.

12 A. It says, "Customer denied for HAMP due to no verifiable
13 income. Borrower is on short-term disability, and for HAMP
14 guidelines we're unable to use short-term."

15 Q. And did GMAC Mortgage speak with Mr. Futrell about this
16 denial?

17 A. It appears that Mr. Futrell spoke with Jenna Jackson
18 (ph.), is who she's listed as --

19 Q. Um-hum.

20 A. -- on the 16th of February, 2010.

21 Q. And was Mr. Futrell also advised of the denial in writing?

22 A. Hold on. I don't recall.

23 Q. Okay. If I could direct your attention to Exhibit H, as
24 in Harry. Would this have been the letter that Mr. Futrell
25 would have been sent concerning his denial?

1 A. Yes, this would have -- this would be a denial letter for
2 loan modification.

3 Q. Okay. If I could just turn your attention back to page 97
4 on the servicing notes, does that -- is there mention of
5 communications in writing?

6 A. Oh, I apologize. I looked over it. It's listed as the
7 denial letter on February 17th, 2010, about, maybe, twelve
8 lines from the top of the page.

9 Q. Okay, and is that the author Kent Hurlburt?

10 A. Yes.

11 Q. Okay. Was Mr. Futrell's loan account considered for a
12 nonHAMP or a traditional loan modification at that time?

13 A. In February?

14 Q. Yes.

15 A. I believe they began a review for a traditional --

16 Q. All right --

17 A. -- yes.

18 Q. -- okay. And did GMAC Mortgage representatives speak with
19 him about that process -- the traditional loan modification
20 process?

21 A. I apologize. I'm just reading through the notes to make
22 sure I answer correctly. I don't show a specific conversation
23 around time that review began --

24 Q. Um-hum.

25 A. -- that they were being reviewed, but it -- it began

1 automatically as a part of process as --

2 Q. What --

3 A. -- HAMP was denied, for trial -- traditional review to
4 begin.

5 Q. Okay. One question: so the second -- we're referring to
6 page 96 of 162, February 19th, second line from the top, it
7 says "approved for LMT, 2/19" -- "2/19/10". What does that
8 entry mean?

9 A. That just shows that they've been approved for a
10 traditional loan modification.

11 Q. Okay.

12 A. That's an internal note.

13 Q. Got it. And did --

14 A. And I -- I apologize, let me correct myself. I said a
15 loan modification?

16 Q. Um-hum.

17 A. They'd been approved for the continued review --

18 Q. Okay.

19 A. -- not for one specifically.

20 Q. Okay. So was there a trial modification plan at that
21 point in time?

22 A. It looks like they were in process of calculating what a
23 trial plan would do. That's what that first notes indicates.

24 Q. Um-hum.

25 A. And later on, on the same date, it looks like, on page 94

1 of 162, the entry at the bottom of the page shows the nonHAMP
2 trial modification --

3 Q. Um-hum.

4 A. -- agreement for three months.

5 Q. Okay. And did this trial modification payment account for
6 the corrected escrow calculation?

7 A. It would appear it does, as if you look at the top of page
8 95 --

9 Q. Um-hum.

10 A. -- it's the finishing piece of that note. It shows the
11 escrow payment as \$46.49.

12 Q. Okay.

13 THE COURT: Do you know whether GMAC considered -- in
14 light of the fact that they now recognize the mistake, whether
15 they considered offering the Futrells a modification under the
16 terms of the original permanent -- HAMP permanent loan
17 modification 57976 of principal and interest with the corrected
18 escrow? By my calculation, that would have resulted in a
19 monthly payment of \$630.59 versus the \$730.42 that was being
20 offered, since it was GMAC's mistake?

21 THE WITNESS: I'll be honest, I don't think I can
22 answer that --

23 THE COURT: There's nothing in --

24 THE WITNESS: -- specifically.

25 THE COURT: -- the notes that would reflect that

1 anybody even thought about it?

2 THE WITNESS: I -- it doesn't say that it was ever
3 discussed, as far as sending corrected permanent modification
4 documents correcting escrow, no.

5 THE COURT: Um-hum.

6 THE WITNESS: But the permanent modification would
7 have only had impact in influencing the mortgage to either
8 note, which would only lock in the terms of the interest rate
9 and the P&I payment. I know it adds escrow, but technically it
10 doesn't dictate the escrow.

11 THE COURT: Actually it would be less than that
12 630.59. I'm looking at -- first, I'm looking at Exhibit E that
13 shows the modified monthly principal and interest at \$579.76.

14 THE WITNESS: Um-hum.

15 THE COURT: But in the May 10th, 2010 letter, Exhibit
16 J, it shows the escrow amount at \$48.67?

17 THE WITNESS: Yes.

18 THE COURT: So the basic point --

19 THE WITNESS: There's a drastic difference.

20 THE COURT: There -- yeah, there's a real drastic
21 difference, and GMAC acknowledged they made a mistake, but they
22 didn't do anything to correct the impact on the Futrells for
23 it.

24 THE WITNESS: That's -- it's difficult for me to say.

25 THE COURT: You weren't there?

1 THE WITNESS: I -- I wasn't there, but also just
2 knowing that this -- that it would have been corrected through
3 a final escrow analysis once they'd agreed to the terms of the
4 P&I payment change. It -- it's just hard for me to -- to say
5 that.

6 THE COURT: All right, just so I correct my own math:
7 the principal and interest have been, as in the permanent loan
8 mod that's shown in Exhibit E, and then with the \$48.67 escrow,
9 as shown in Exhibit J, that would total \$625.43 a month as the
10 payment as opposed to the \$730.42 that was being proposed?
11 Okay.

12 Go ahead, Mr. Wishnew.

13 MR. WISHNEW: Thank you, Your Honor.

14 BY MR. WISHNEW:

15 Q. Ms. Lathrop, was the client -- was Mr. Futrell offered a
16 permanent loan modification at the end of the trial
17 modification period?

18 A. Yes, at the end of the traditional trial period, there was
19 a -- a permanent traditional modification offered.

20 Q. Okay. And was that communicated to the claimant?

21 A. Yes, there were documents sent.

22 Q. Okay. If I could turn your attention to Exhibit J, as in
23 Jordan? Is this the permanent trial modification?

24 MR. WISHNEW: I'm sorry, let me rephrase.

25 Q. Is this the permanent modification?

1 A. Yes, this is the permanent tra -- traditional modification
2 that was offered on May 20th, 2010.

3 Q. Okay. Was a signed copy of the modification received by
4 GMAC Mortgage?

5 A. Yes, this document was signed.

6 Q. Okay, and subsequent to it being signed, did GMAC Mortgage
7 receive a signed copy, according to its servicing notes?

8 A. Oh, you would like me to show you when the document was
9 received in the servicing notes?

10 Q. Exactly. I apologize for that.

11 A. It looks like the notes on page 82 of 162 --

12 Q. Um-hum.

13 A. -- show received documents and funds for loan mod on June
14 3rd, 2010.

15 Q. Okay.

16 A. It's about the middle of the page.

17 Q. Thank you very much. At the time Mr. Futrell was approved
18 for the permanent loan modification, was his loan delinquent?

19 A. At the time that he was approved for this one? Yes.

20 Q. Yes. And which payments are outstanding under -- under
21 the terms of the loan?

22 A. As in, which specific date?

23 Q. As of August 1st, 2010 -- as of the August 1st, 2010
24 effective date?

25 A. So you would like to know what the account was due for as

1 of August 1st, 2010?

2 Q. Yes, thank you very much.

3 A. The account would have been current as of August 1st,
4 2010.

5 Q. Well, it would be brought current, but would there have
6 been past due amounts prior to it being brought current?

7 A. On the date that the loan modification was added to the
8 account --

9 Q. Um-hum.

10 A. -- on June 8th, 2010 --

11 Q. Um-hum.

12 A. -- the account was due for October 1st, 2009 through that
13 current month, and then the loan modification included the June
14 and July payments, with the first payment due August 1st, 2010.

15 THE COURT: I'm sorry, give me the period -- October
16 1st, 2009 through what date?

17 THE WITNESS: August 1st, 2009 through June 1st, 2010
18 were delinquent at the time of the loan mod being received, but
19 then it wrapped in the June and July payments as a part of the
20 modifications, so the first payment was due August 1st.

21 THE COURT: Um-hum.

22 Q. Ms. Lathrop, you testified earlier that in February of
23 2010, the escrow analy -- the June 2009 escrow analysis was
24 corrected, right?

25 A. Yeah, it showed that they had accounted for the

1 insurance --

2 Q. Prior --

3 A. -- correctly.

4 Q. Prior to the escrow issue being corrected, did the
5 Futrells payments under the June 2009 trial modification plan
6 incorporate the incorrect escrow amount?

7 A. I don't know if I understand the question.

8 Q. So when they were doing the trial plan in July, I believe,
9 of 2009 -- or August of 2009, they made three payments in the
10 approximate amount of 700-some-odd dollars?

11 A. Oh, at the trial plan payments of 730?

12 Q. Yes, exactly, thank you.

13 A. Okay.

14 Q. Did those payments include the incorrect escrow estimate
15 amounts in them?

16 A. Yes, it did.

17 Q. Okay. And what happened to those amounts after they were
18 received by GMAC Mortgage? That is, the incorrect escrow
19 amounts?

20 A. What happened with the excess funds?

21 Q. Yes.

22 A. If -- let me look at the payment history to see how that
23 happened. It appears that the first payment that came in for
24 the trial, for instance --

25 Q. Um-hum.

1 A. -- is on page 7 of the payment history out of 162.

2 Q. So you're referring to Exhibit D?

3 A. Exhibit D, I apologize, yes.

4 Q. Okay.

5 THE COURT: I'm sorry, page 7?

6 THE WITNESS: Page 7, yes, sir.

7 A. Dated July 3rd, 2009, it's just below the middle of the
8 page.

9 Q. Um-hum.

10 A. So we show the \$730.76 coming in, and then of that,
11 \$657.25 of that was applied as regular payment.

12 Q. Um-hum.

13 A. And the remaining -- let me look at the specific number --
14 \$73.51 was applied to bucket UFF, which was his expense account
15 used for holding funds until there's enough to complete a
16 payment or to apply as it was meant to be.

17 Q. Okay.

18 A. and then it appears that's how that payment was posted, as
19 well as -- let me look. Do you want me to give you the futures
20 or are you good with just that one?

21 Q. No, that's good for that.

22 A. Okay.

23 Q. So were those amounts ever paid out for insurance or
24 property tax payments?

25 A. The -- the money that was in that UFF bucket?

1 Q. Correct.

2 A. It doesn't show that that money ever came out and was used
3 in the escrow account, no.

4 Q. To the best of your knowledge, what was the disposition of
5 those funds?

6 A. Let me just follow the history. It looks like, at the
7 conclusion of the trial, the total came to \$220.53.

8 Q. Um-hum.

9 A. Because the trial was no longer active, it got moved to
10 bucket UFU, which was just a standard suspense bucket.

11 Q. Um-hum.

12 A. Let me see what happened with those funds. It appears, on
13 February 1st, 2010, that \$220.53 was taken out and applied
14 toward fees --

15 Q. Um-hum.

16 A. -- that were due on the account.

17 Q. Okay.

18 THE COURT: Check -- where is that, if you could,
19 please?

20 THE WITNESS: I apologize. It is on page 6 of 162.

21 THE COURT: Yes.

22 THE WITNESS: It's probably seven lines down or so.
23 It's the FE note with teller ID number 31204.

24 THE COURT: Yes

25 THE WITNESS: And prior to that, I do show that the

1 money did move from UFU to bucket UFN, and then moved from UFN
2 to be applied towards fees.

3 THE COURT: What fees?

4 THE WITNESS: It -- it doesn't itemize out for me how
5 those fees were applied.

6 THE COURT: What fees could it be applied to?

7 THE WITNESS: It could have been applied to property
8 inspection fees or it could have been applied to a BPO fee that
9 may have been taken on --

10 THE COURT: Broker's --

11 THE WITNESS: -- the account.

12 THE COURT: Broker's price opinion?

13 THE WITNESS: Yes, sir.

14 THE COURT: Go ahead.

15 BY MR. WISHNEW:

16 Q. Ms. Lathrop, this morning, Mr. Futrell and Mrs. Futrell
17 testified were burdensome to them. They also testified that
18 they aim to stay no more than thirty days behind on their
19 mortgage payments. In your experience with GMAC Mortgage, if a
20 borrower stays thirty days behind, they will be charged a late
21 payment, correct?

22 A. Yes, in accordance with the mortgage note.

23 Q Okay, so then, in my -- is it accurate that the late
24 charges that were recurring on a regular basis were simply the
25 result of the Futrells' choice to remain thirty days behind?

1 A. The -- the -- I suppose.

2 Q. Okay.

3 MR. WISHNEW: Your Honor, I have no more questions for
4 Ms. Lathrop.

5 THE COURT: All right, cross examination.

6 MR. MARGOLIS: Thank you.

7 CROSS-EXAMINATION

8 BY MR. MARGOLIS:

9 Q. Please repeat for me how you prepared for your -- the
10 testimony?

11 A. How I prepared for --

12 Q. What did you --

13 A. -- this?

14 Q. What did you look at? What did you -- what documents,
15 what exhibits, what pleadings?

16 A. I reviewed the servicing notes, the payment history,
17 the -- I mean, the majority of the documents that are listed
18 here. I reviewed the loan modifications that were submitted.
19 I reviewed multiple documents. I --

20 Q. Was it inclusive of the second objection of the trust?

21 A. I -- I honestly don't recall.

22 Q. Okay. Okay, now, you say that, with regard to the June
23 17th, which is Exhibit Number 4 for the claimant, that the --
24 that there was a typo, and that there was this one added, so
25 that instead of 352, it was 1,352, correct?

1 A. I -- I admit that the insurance used -- used in the
2 analysis was incorrect, yes.

3 Q. Okay. Why did it -- did it take from June 17th '09 to
4 February 2 -- February 3rd, '10 to correct the error?

5 A. Based on the servicing notes, it shows that the account
6 was showing an inactive loan modification, which kept the
7 system in -- locked up. It was a system limitation that did
8 not allow the system to update until either it was executed or
9 the loan modification process ended.

10 Q. So a system limitation?

11 A. Yes, sir.

12 Q. Okay. Now, the question that counsel asked with regard to
13 the -- I guess not -- it's not an excess, but the 220.53?

14 A. Yes, sir.

15 Q. And it went to the -- to the bucket?

16 A. The suspense --

17 Q. I'm not --

18 A. -- bucket?

19 Q. -- sure. I asked it quizzically.

20 A. Oh, okay. Are you asking about specific dates, or --

21 Q. Yes -- well, yes. Okay, that 220.53, that went to the
22 bucket or whatever, correct? Within the GMAC system?

23 A. It moved several times. I -- so I just want to make sure
24 I answer appropriately.

25 Q. If I -- was there -- was there ever an accounting to the

1 Futrells over that money?

2 A. I -- I can't answer that question. I don't have bank --
3 not a bank statement, I'm sorry, a monthly account statement,
4 and I don't know what time period. Do you -- are you talking
5 about regarding the payment history itself? Or --

6 Q. Well, I'm asking if they were provided with an explanation
7 of what happened to this \$220.53?

8 A. I -- I believe it would have been reflected on the account
9 statement post the February 1st, 2010 transaction.

10 Q. Do you know that to be a fact, or do you just believe that
11 to be so?

12 A. I believe that, sir.

13 Q. You haven't --

14 A. I don't have the --

15 Q. You haven't seen the statement --

16 A. -- actual account statement to review it. But according
17 to business practice and the way the system worked, anything
18 that happened between account statements with money would have
19 been reflected on the monthly account statement.

20 Q. Okay. Okay, referring to the 1,247 escrow shortage on the
21 lower half of that June 17th document, you didn't mention that?

22 THE COURT: I'm sorry --

23 A. Which document?

24 Q. What --

25 THE COURT: -- I don't understand your question.

1 Q. Okay. Was the 1,247 dollars and change noted on the June
2 17th escrow analysis? Was that an accurate statement of their
3 escrow shortage?

4 MR. WISHNEW: Your Honor, objection. If counsel has a
5 specific question related to a specific document, I ask that he
6 reference the --

7 THE COURT: Sustained.

8 MR. WISHNEW: -- documents.

9 MR. MARGOLIS: Okay, that's fine. Okay.

10 Q. I'd like to refer you to --

11 MR. MARGOLIS: One moment.

12 Q. To page 117 of 159.

13 THE COURT: Of 162?

14 MR. MARGOLIS: Yes, I'm sorry.

15 A. The payment history and --

16 Q. Yeah.

17 A. -- servicing notes?

18 Q. No, no, no, no. It's the service notes.

19 A. Oh, the service notes? And I'm sorry, can you say the
20 page one --

21 Q. Sure.

22 A. -- more time?

23 Q. 117. And go -- and go to the 6/17/09 and the person that
24 made the entry was Camille Weiland.

25 A. Sorry, I'm on the wrong page.

1 Q. That's fine.

2 THE COURT: I don't see where you're pointing. What
3 page?

4 MR. MARGOLIS: It's 117.

5 THE COURT: Yes. And what's the entry?

6 MR. MARGOLIS: And it's -- it's 6/17 --

7 THE COURT: There's no 6/17 dates on there.

8 THE WITNESS: I believe he means 1/20, Your Honor.

9 Q. 1/20. It indicates a shortage amount of \$1,541.69 for
10 that date?

11 A. I -- I do see that note.

12 Q. Okay, now, was the escrow shortage the 1541.69 or the 1247
13 and change?

14 A. I -- I personally can't answer that question. I didn't
15 work in escrow and I didn't do this analysis.

16 Q. Okay, but that --

17 A. I believe -- I mean, if you want me to go off of what we
18 have --

19 Q. No, no, no.

20 A. -- it would have been --

21 Q. At this point -- the point is, you have -- you have the
22 escrow analysis here and the service notes here, and they're
23 different?

24 A. They do appear to conflict, I agree.

25 Q. Okay. At this time, I -- okay, are the entries in the

1 service notes true, accurate, and correct?

2 A. They should be, yes.

3 Q. Okay.

4 A. But -- oh, no, never mind, I'm sorry.

5 Q. Go ahead.

6 A. Go ahead.

7 Q. Oh, okay. Okay, do you know a Kathy Priore?

8 A. A --

9 Q. Well, okay. And obviously, she did a supporting affidavit
10 for the same objection.

11 A. Okay.

12 Q. It's paragraph 14, and she -- and she wrote: on June 2nd,
13 2009, claimant spoke with Homecomings regarding his account.
14 And as a result of that conversation, Homecomings set up a five
15 month special forbearance plan intended to provide claimant
16 with some time to complete and return workout package. Got it?
17 Now --

18 MR. WISHNEW: Your Honor, objection. Is there a
19 specific --

20 MR. MARGOLIS: Yes.

21 MR. WISHNEW: -- exhibit being referenced?

22 MR. MARGOLIS: Yes.

23 Q. Now, could you please check --

24 THE COURT: Were you reading from a specific exhibit
25 when you gave her --

1 MR. MARGOLIS: Well, it --

2 THE COURT: -- that information?

3 MR. MARGOLIS: It's not in an exhibit, it was the
4 second objection to their pleading.

5 THE COURT: Okay. All right. What page?

6 MR. MARGOLIS: It was page 6 of 13.

7 THE COURT: Okay.

8 MR. MARGOLIS: I'm sorry.

9 THE COURT: That's okay, I just want to make sure
10 everybody knows what you're -- what you're looking at.

11 MR. WISHNEW: Your Honor, one clarification: what
12 docket number, please?

13 THE COURT: What --

14 MR. MARGOLIS: That's 8315-3.

15 (Pause)

16 MR. MARGOLIS: Got it?

17 BY MR. MARGOLIS:

18 Q. Oh, yes --

19 A. I -- I don't --

20 Q. -- of course.

21 A. I don't have that.

22 Q. Okay, now I refer you to the service notes, page 120, and
23 for the date 6/2/09.

24 A. I think your numbers don't match mine.

25 Q. Okay. It's page 123.

1 A. Okay.

2 Q. And again, the date is 6/2/09.

3 A. Yes, sir.

4 Q. And that entry reads: 6/2/09 DMD, 6/2/09 13:19:08 message
5 to voice, Daybox (ph.) incoming system.

6 A. Yes, sir?

7 Q. So is -- so how could anyone have spoken to them if they
8 left a message?

9 A. Is it -- I suppose I'm confused, sir. I show --

10 Q. Well --

11 A. -- a conversation on 6/2/09 with Laura Perez on that same
12 page that says: talked to borrower 1. So I -- I do show there
13 was a conversation regarding the forbearance plan on that date.

14 Q. How far -- how far down -- okay. Rang customer, special
15 forbearance plan --

16 THE COURT: Don't talk to yourself --

17 MR. MARGOLIS: I'm sorry --

18 THE COURT: -- on the record --

19 MR. MARGOLIS: -- Your Honor.

20 THE COURT: If you've --

21 MR. MARGOLIS: I'm --

22 THE COURT: -- got a question, ask the question.

23 MR. MARGOLIS: I'm sorry. Okay.

24 Q. But there is an entry that it went to -- went to message,
25 correct?

1 A. The one with the Daybox incoming --

2 Q. Yes.

3 A. -- file?

4 Q. Yes.

5 A. I do show that on the servicing notes, yes, sir.

6 Q. Okay, now, do the GMAC employees know each other? I mean,
7 and they have these servicing records that all have access to?

8 A. I can't say they know each other. There's offices
9 everywhere. As far -- I shouldn't say "everywhere", but
10 multiple sites.

11 Q. They're --

12 A. They --

13 Q. -- readily available?

14 A. They would -- they would have access to the records
15 through the LoanServ system, though.

16 Q. Well, I'd like to refer you to the date 1/29/10. And the
17 entry was made by Samuel McCough (ph.).

18 THE COURT: What page?

19 MR. MARGOLIS: I have page 99, and they're checking.

20 A. The date 1/29/10, January 29th?

21 Q. Yes.

22 THE COURT: I don't see that on page 99. All the
23 dates on page 99 are February dates.

24 MR. MARGOLIS: It's 102, based on the other sheets.

25 A. which entry from the 29th, sir?

1 Q. Okay, it's 1/29/10, the entry's made by Samuel McCough,
2 were he wrote: they have never spoken with anyone named Jenna,
3 who was the last person to note the account about the problem.
4 Got it?

5 A. Yes, sir, I see that.

6 Q. Now, I refer you to --

7 MR. MARGOLIS: My mistake.

8 Q. To page -- the date is 1/26/10, 103.

9 A. Yes, sir.

10 Q. And you look on the right, the name Jenna Jackson appears
11 for several entries for several entries, correct?

12 A. Yes, sir, I see that that's her complete note for that
13 day.

14 Q. I understand. But Samuel McCough says they never spoke to
15 a Jenna, correct?

16 A. He says that he spoke with -- I assume Mrs. Futrell is who
17 B-2 is -- states that she did not do that, yes.

18 Q. Okay.

19 THE COURT: Mr. Margolis?

20 MR. MARGOLIS: Yes?

21 THE COURT: We are going to stop at twenty minutes --

22 MR. MARGOLIS: Okay.

23 THE COURT: -- to four. I'm just telling you. If --

24 MR. MARGOLIS: Okay.

25 THE COURT: -- you're not done, that's fine. We'll

1 resume at 6:15 pm --

2 MR. MARGOLIS: Okay.

3 THE COURT: -- tonight, if that's what you want to do.

4 But we're going to finish tonight, one way or --

5 MR. MARGOLIS: Yes.

6 THE COURT: -- the other.

7 MR. MARGOLIS: That's fine with me.

8 THE COURT: You're also -- you can go on if you want,
9 but I -- your point is being missed by me. Your points are
10 being missed by me.

11 MR. MARGOLIS: Well, if it -- okay.

12 THE COURT: But go ahead.

13 MR. MARGOLIS: Okay, fine. Okay.

14 Q. Who cancelled the 355 repayment plan? Do you know?

15 A. I -- I'd have to look at the servicing notes, sir. Do you
16 have a -- do you have a date, just so I can get to it quicker?

17 Q. Oh, okay. Okay. Okay, based on policy, who would have
18 made that decision?

19 A. It would have been dependent on what was going on with the
20 account, sir.

21 Q. Can you be a tad more specific?

22 A. Honestly, without looking at it and reviewing, it would be
23 very difficult for me to be specific. Do you want me to review
24 the servicing notes quickly --

25 Q. No, that's --

1 A. -- to see what happened?

2 Q. No, that's okay. Okay, now, it's your testimony that
3 the -- that the correcting the typo of the one had been
4 resolved, correct?

5 A. Yeah, I show that the escrow analysis was completed
6 February --

7 Q. Okay.

8 A. -- 3rd, 2010.

9 Q. So could -- so could you please explain to me why it was
10 contained in Exhibit 8, which is the April 4th, 2013 opt-in
11 letter?

12 A. Just give me a second to --

13 Q. No --

14 A. -- look at this --

15 Q. -- it's fine.

16 A. -- please? Are you referring to them specifically talking
17 about the June 2009 analysis or is there a -- I just want to
18 make sure I'm looking at the right thing.

19 Q. Well, excuse me. I misspoke. What should have been the
20 question is the -- is the shortage of \$1,249.71.

21 MR. WISHNEW: Your Honor, objection. Shortage as to
22 what?

23 THE COURT: Sustained.

24 MR. MARGOLIS: I'll just finish up with this.

25 Q. Okay, you relied your testimony, your conclusions on

1 examining the record, correct?

2 A. On examining the documents and the --

3 Q. Right, the --

4 A. -- servicing notes and --

5 Q. Right.

6 A. -- payment history, yes.

7 Q. That's right. Okay. And at this point, do you concede
8 that, between the system irregularities and the entries,
9 they're not exactly accurate all the time?

10 THE COURT: I don't -- I --

11 A. I don't understand you.

12 THE COURT: I'm sorry, I lost your question.

13 MR. MARGOLIS: Okay.

14 Q. Do you acknowledge inaccuracies in the --

15 THE COURT: Again, she already acknowledged
16 inaccuracies.

17 MR. MARGOLIS: Okay.

18 THE COURT: And she already said it was the system
19 issue --

20 MR. MARGOLIS: Okay.

21 THE COURT: -- you couldn't correct it while it was
22 in --

23 MR. MARGOLIS: Okay.

24 THE COURT: So that's clear to me.

25 MR. MARGOLIS: Okay. Okay.

1 THE COURT: That's not disputed.

2 MR. MARGOLIS: Okay. Oh, okay. One last question?

3 THE COURT: Sure, go ahead.

4 MR. MARGOLIS: Okay.

5 Q. Now, there were the statements -- and you indicated it
6 went to pay the fees. When there was the statement with regard
7 to just the fees and the costs, were they explained to the
8 Futrells as a borrower?

9 A. I --

10 MR. WISHNEW: Objection, Your Honor. Fees and costs
11 when and limited to --

12 THE COURT: Sustained.

13 MR. MARGOLIS: Well, okay.

14 THE COURT: They were charged -- their account was
15 charged for BPOs, broker -- broker price opinions. Do you know
16 whether there -- anyone from GMAC explained to the Futrells
17 that they were being charged for BPOs or inspection fees?

18 THE WITNESS: I -- without reviewing them right now, I
19 couldn't answer off --

20 THE COURT: Okay.

21 THE WITNESS: -- the top of my head.

22 THE COURT: That's fine. So there's your que --
23 there's your answer to your question.

24 MR. MARGOLIS: Okay.

25 Q. And on the statement dated July 18, 2012, there is a --

1 THE COURT: What exhibit number?

2 MR. MARGOLIS: Oh, I'm sorry. It's N.

3 THE WITNESS: N? So one second so I can get there?

4 Q. I'm sorry.

5 A. Okay.

6 Q. The Corp ADVJDDSR (ph.). Was that -- was that fee ever
7 explained to the Futrells?

8 A. I -- I don't know without looking at the servicing notes,
9 sir.

10 Q. Okay. Would it have been in practice to explain that to
11 them?

12 A. If it was questioned, most definitely.

13 THE COURT: Can I ask you? I'm looking at Exhibit N.

14 THE WITNESS: N --

15 THE COURT: The "Corp" --

16 THE WITNESS: Go ahead.

17 THE COURT: -- "ADV", I assume that's the corporate
18 advance?

19 THE WITNESS: Yes, sir.

20 THE COURT: What's DRN?

21 THE WITNESS: I -- I can't answer for the acronym.

22 THE COURT: All right.

23 Next question.

24 Q. When is it disclosed to a borrower that if they use
25 Speedpay fee pay that there is a charge of 7.50? And I refer

1 to Exhibit P, which is statement April 20, '09.

2 MR. WISHNEW: Objection, Your Honor. What does this
3 have to do with October 30th QWR?

4 MR. MARGOLIS: It goes to the accuracy --

5 THE COURT: Overruled.

6 MR. MARGOLIS: -- of the records to --

7 THE COURT: Overruled.

8 MR. MARGOLIS: Okay.

9 THE COURT: Overruled.

10 A. The Speedpay fee would have been disclosed at the time
11 that the payment was being made. It appears the 7.50 was the
12 automated system, so it should have been advised through the
13 automated system.

14 Q. So there's no advance notice and you call and you say, do
15 you use the service? And you say, by the way, it's 7.50?

16 A. You have to confirm that you're to pay the 7.50, but yes,
17 it would advise you, and then give you the option to end your
18 connection if you don't want to pay it.

19 Q. Thank you.

20 THE COURT: Okay.

21 Redirect?

22 MR. WISHNEW: One moment, Your Honor.

23 (Pause)

24 REDIRECT EXAMINATION

25 BY MR. WISHNEW:

1 Q. Ms. Lathrop, going back to Exhibit D, the servicing notes,
2 specifically page 123, at the top of the page. There was some
3 testimony about the transaction user name Dat Devox (ph.)
4 Incoming File and Lolita Perez (ph.). Are those two separate
5 entries?

6 A. Are you talking about the one with the HA
7 MP note next to it versus the one that says that just the DM
8 with no note next to it?

9 Q. That is correct, yes.

10 A. It would have been, technically separate. One probably
11 would have occurred to reflect any phone call or conversation,
12 and the other would have been follow-up work or additional
13 notes on the account.

14 Q. Okay. If I could ask you to turn briefly to Exhibit J,
15 the May 20th, 2010 letter.

16 A. J?

17 Q. J, yes. On the first page, in the middle of the page,
18 right before the text box, there's a -- can you review the last
19 bullet point where it starts off, "All miscellaneous fees and
20 costs excluding late charges, may not have been included in a
21 loan modification and will remain as standing." Does that
22 notation indicate that if this modification is executed, then
23 late fees will be waived?

24 A. Yes, sir.

25 Q. Okay.

1 MR. WISHNEW: No further questions, Your Honor.

2 THE COURT: All right. Thank you very much, Ms.

3 Lathrop.

4 Let me suggest this: you want to come back at 6:15
5 and do closings, we could do that. If you would prefer, I will
6 let the two of you work out a time, and we'll do the closings,
7 and Mr. Margolis can do it by phone.

8 If you want to do it by phone, you can, too, Mr.
9 Wishnew.

10 Actually, you probably should both do it by phone.

11 MR. WISHNEW: Okay.

12 MR. MARGOLIS: Okay.

13 THE COURT: Nobody's going to have the advantage of
14 being in the courtroom -- or the disadvantage.

15 MR. WISHNEW: I'll take that option, Your Honor.

16 MR. MARGOLIS: If it please the Court, I would waive
17 final and defer to the Court.

18 THE COURT: Mr. Wishnew?

19 MR. WISHNEW: I'm willing to waive the closing
20 statement.

21 THE COURT: Okay. All right, so both sides agree to
22 waive closing argument. Do both --

23 Mr. Margolis, do you rest?

24 MR. MARGOLIS: I do.

25 THE COURT: Mr. Wishnew, do you rest?

1 MR. WISHNEW: Yes, Your Honor.

2 THE COURT: All right. The matter's going to be taken
3 under submission.

4 MR. WISHNEW: Thank you very much for your time.

5 THE COURT: Okay.

6 MR. MARGOLIS: Thank you.

7 THE COURT: Thank you. And I'm sorry. You know, we
8 got a late start, the weather and traffic and all of that, and
9 just the commitments I get. So I want to be sure -- I don't
10 mind coming back.

11 MR. MARGOLIS: Yeah.

12 THE COURT: If either side felt that they didn't get
13 to do what they wanted to do, I would be back. All right.
14 Safe trip home, okay?

15 IN UNISON: Thank you.

16 THE COURT: All right.

17 MR. WISHNEW: Have a good day at school.

18 THE COURT: Thank you. To have thought, at this point
19 in my life, and I'm going back to school?

20 MR. WISHNEW: I've just recently done that.

21 UNIDENTIFIED SPEAKER: Knowledge --

22 MR. WISHNEW: That's what --

23 UNIDENTIFIED SPEAKER: -- is power.

24 MR. WISHNEW: -- I do. That's what I do for now.

25 THE COURT: All right. Safe trip home.

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1 MR. WISHNEW: Thank you, Your Honor.

2 THE COURT: Thank you, everybody.

3 (Whereupon these proceedings were concluded at 3:37 PM)

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I N D E X

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EXHIBITS

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	Declaration	
ALL PARTIES		
--	All premarked	89
	exhibits	

C E R T I F I C A T I O N

I, Hana Copperman, certify that the foregoing transcript is a true and accurate record of the proceedings.

Hana Copperman

HANA COPPERMAN

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Date: January 27, 2016